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CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

FILED

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12 Attorneys for Defendant  
13 WELLS FARGO BANK, N.A.

14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA

16 ISAAC CURRY, *individually*  
17 Plaintiff,

18 v.

19 WELLS FARGO BANK, N.A.; and  
20 DOES 1 through 50 inclusive,  
21 Defendants.

Case No.

CV12-6962

NOTICE TO FEDERAL COURT OF  
REMOVAL OF CIVIL ACTION  
FROM STATE COURT PURSUANT  
TO 28 U.S.C. §§ 1331, 1441, AND  
1446

ODW  
(PSWx)

1 **TO THE CLERK OF THE ABOVE-ENTITLED COURT, AND TO**  
 2 **PLAINTIFF ISAAC CURRY AND HIS ATTORNEYS OF RECORD:**

3 **PLEASE TAKE NOTICE** that Defendant WELLS FARGO BANK,  
 4 N.A. (“Defendant”) hereby removes this action from the Superior Court of California,  
 5 County of Los Angeles, to the United States District Court for the Central District of  
 6 California. This removal is based on federal question jurisdiction, pursuant to 28  
 7 U.S.C. Sections 1331, 1441, and 1446. The specific grounds for removal are as  
 8 follows:

9 **JURISDICTION**

10 1. This Court has original jurisdiction over this action pursuant to 28  
 11 U.S.C. §1331, and this action is one that may be removed to this Court pursuant to the  
 12 provisions of 28 U.S.C. §1441(a), in that it is a civil action that presents a federal  
 13 question under the Fair Labor Standards Act, 29 U.S.C. §201. As set forth below, this  
 14 case meets all of Section 1331’s requirements for removal and is timely and properly  
 15 removed by the filing of this Notice.

16 **VENUE**

17 2. This action was filed in the Superior Court of California, County of  
 18 Los Angeles. Venue is proper in the United States District Court for the Central  
 19 District of California pursuant to 28 U.S.C. sections 84 (c)(2), 1391 and 1446.

20 **PLEADINGS, PROCESS AND ORDERS**

21 3. On or about December 22, 2011, Plaintiff Isaac Curry (“Curry” or  
 22 “Plaintiff”) filed a Complaint in the Superior Court of California, County of Los  
 23 Angeles, entitled *Isaac Curry v. WELLS FARGO BANK, N.A.; and DOES 1 through*  
 24 *50, inclusive*; Case No. YC066168 (“Complaint”). Plaintiff alleged three causes of  
 25 action for: (1) unfair competition in violation of California Business and Professions  
 26 Code section 17200, *et. seq.*; (2) failure to pay overtime in violation of California  
 27 Labor Code sections 510, 551, 552, 1194, and 1198; and (3) failure to provide proper  
 28 wage statements in violation of California Labor Code section 226. Attached hereto

1 as Exhibit A is a true and correct copy of the Summons and the Complaint.

2 4. On February 24, 2012, Wells Fargo Bank, N.A. ("Wells Fargo" or  
3 "Defendant") filed an Answer to Plaintiff's Complaint in the Superior Court of  
4 California for the County of Los Angeles. Attached hereto as Exhibit B is a true and  
5 correct copy of Defendant Wells Fargo Bank's Answer to Plaintiff's Complaint.

6 5. Wells Fargo is informed and believes that no Doe defendant has  
7 been identified or served.

8 6. On or about May 2, 2012, the Superior Court of California for the  
9 County of Los Angeles served a Notice of Case Reassignment and of Order for  
10 Plaintiff to Give Notice, reassigning the case to Judge Laura C. Ellison. Attached  
11 hereto as Exhibit C is a true and correct copy of the Notice.

12 7. On or about May 15, 2012, Wells Fargo filed a Case Management  
13 Statement, a true and correct copy of which is attached hereto as Exhibit D. On or  
14 about May 17, 2012, Plaintiff filed a Case Management Statement, a true and correct  
15 copy of which is attached hereto as Exhibit E.

16 8. On May 31, 2012, Judge Ellison conducted a case management  
17 conference at which time she set a trial date of February 26, 2013. Judge Ellison did  
18 not issue a written order.

19 9. On or about June 28, 2012, Wells Fargo filed a Stipulated  
20 Protective Order, which was signed by Judge Ellison on July 16, 2012. A true and  
21 correct copy of the signed Stipulated Protective Order is attached hereto as Exhibit F.

22 10. On or about June 27, 2012, Plaintiff filed a Stipulation and  
23 [Proposed] Order for Leave for Plaintiff to File a First Amended Complaint, which  
24 was signed by Judge Ellison on July 16, 2012. A true and correct copy of the  
25 Stipulation and Order is attached hereto as Exhibit G.

26 11. On or about July 20, 2012, Plaintiff served Wells Fargo by mail  
27 with Plaintiff's First Amended Complaint. Plaintiff's First Amended Complaint  
28 added three new causes of action to the three causes of action pled in Plaintiff's

1 original Complaint: (4) retaliation in violation of the Fair Employment and Housing  
 2 Act, California Government Code §12940; (5) wrongful termination; and (6) violation  
 3 of the Fair Labor Standards Act, 29 U.S.C. §201, *et. seq.* Plaintiff filed this First  
 4 Amended Complaint on or about July 20, 2012. Attached hereto as Exhibit H is a true  
 5 and correct copy of Plaintiff's First Amended Complaint.

6 12. On or about August 10, 2012, Wells Fargo filed an Answer to  
 7 Plaintiff's First Amended Complaint in the Superior Court of California, County of  
 8 Los Angeles. Attached hereto as Exhibit I is a true and correct copy of Defendant  
 9 Wells Fargo Bank's Answer to Plaintiff's First Amended Complaint.

10 13. Pursuant to 28 U.S.C. section 1446(a), the attached exhibits  
 11 constitute all process, pleadings and orders served upon Defendants or filed or  
 12 received in this action by Defendants.

### 13 TIMELINESS OF REMOVAL

14 14. This Notice of Removal is timely in that it has been filed by  
 15 Defendant within thirty 30 days after receipt by the Defendant of a paper from which  
 16 it may first be ascertained that the case is one which is or has become removable. *See*  
 17 28 U.S.C. §1446(b).

### 18 FEDERAL QUESTION JURISDICTION

19 15. Section 1331 provides as follows:

20 The district courts shall have original jurisdiction of all civil  
 21 actions arising under the Constitution, laws, or treaties of the  
 22 United States.

23 16. This action is a civil action over which this Court has original  
 24 jurisdiction based upon the existence of a federal question pursuant to Section 1331,  
 25 and is one which may be removed to this Court by Defendant pursuant to 28 U.S.C.  
 26 section 1441(b) because it is a civil action that presents a federal question as set forth  
 27 below.

28 17. Plaintiff's First Amended Complaint alleges a cause of action for  
 failure to pay overtime in violation of the Fair Labor Standards Act, 29 U.S.C. §201,

1 *et. seq.* (Exhibit G, First Amended Complaint at ¶¶77-95). As such, this Court has  
 2 original jurisdiction under Section 1331 as “arising under the Constitution, laws, or  
 3 treaties of the United States.”

4 18. This case may be removed to this Court by Defendant pursuant to  
 5 28 U.S.C. § 1331 and 28 U.S.C. § 1441(b) because it is a civil action that arises under  
 6 the laws of the United States.


7 19. The remaining claims and causes of action, related to Plaintiff’s  
 8 employment with Defendant, are based on the same facts, events, transactions and  
 9 occurrences as Plaintiff’s Fair Labor Standards Act claim and are so related to  
 10 Plaintiff’s Fair Labor Standards Act claim as to form part of the same case and  
 11 controversy. Therefore, the Court has supplemental jurisdiction over these claims  
 12 pursuant to 28 U.S.C. § 1367(a). Alternatively, the Court has jurisdiction of the  
 13 remaining claims pursuant to 28 U.S.C. § 1441(c).

#### 14 **NOTICE TO PLAINTIFF**

15 39. Contemporaneously with the filing of this Notice of Removal in  
 16 the United States District Court for the Central District of California, written notice of  
 17 such filing will be given by the undersigned to Plaintiff’s counsel of record  
 18 Blumenthal, Nordrehaug & Bhowmik, 2255 Calle Clara, La Jolla, California 92037.  
 19 In addition, a copy of Notice of Removal will be filed with the Clerk of the Court for  
 20 the Superior Court of California, County of Los Angeles.

1 WHEREFORE, having provided notice as is required by law, the above-  
2 entitled action should be removed from the Superior Court for the County of San Los  
3 Angeles to this Court.

4  
5 Dated: August 13, 2012

  
6  
7 LINDBERGH PORTER, JR.  
8 MARY D. WALSH  
9 LITTLER MENDELSON  
A Professional Corporation  
Attorneys for Defendant  
WELLS FARGO BANK, N.A.

10 Firmwide:113379689.1 051995.1048  
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# **EXHIBIT A**

SUM-100

**SUMMONS**  
(CITACION JUDICIAL)

**NOTICE TO DEFENDANT:**  
(AVISO AL DEMANDADO):

WELLS FARGO BANK, N.A.; and DOES 1 through 50 inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:**  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):  
ISSAC CURRY, individually,

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**CONFORMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court

DEC 22 2011

John A. Clarke, Executive Officer/Clerk

By A. Allen, Deputy

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en este corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida el secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Southwest District, Torrance Courthouse

825 Maple Ave., Torrance, CA 90503

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Norman B. Bumenthal (Bar # 68687)

Blumenthal, Nordrehaug & Bhowmik, 2255 Calle Clara, La Jolla, CA 92037

Fax No.: (858) 551-1232

Phone No.: (858) 551-1223

DATE:

(Fecha)

DEC 22 2011

Clerk, by

(Secretario)

JOHN A. CLARKE

A. ALLEN

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

**NOTICE TO THE PERSON SERVED: You are served**

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): Wells Fargo Bank, N.A.

- |   |   |
|---|---|
| under: <input type="checkbox"/> CCP 416.10 (corporation)                    | <input type="checkbox"/> CCP 416.60 (minor)             |
| <input type="checkbox"/> CCP 416.20 (defunct corporation)                   | <input type="checkbox"/> CCP 416.70 (conservatee)       |
| <input checked="" type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |

☐ other (specify):

4. ☒ by personal delivery on (date): 1/12/12



1 **BLUMENTHAL, NORDREHAUG & BHOWMIK**

2 Norman B. Blumenthal (State Bar #068687)

3 Kyle R. Nordrehaug (State Bar #205975)

4 Aparajit Bhowmik (State Bar #248066)

5 2255 Calle Clara

6 La Jolla, CA 92037

7 Telephone: (858) 551-1223

8 Facsimile: (858) 551-1232

9 Firmsite: [www.bamlawca.com](http://www.bamlawca.com)

10 Attorneys for Plaintiff

CONFIDENTIAL COPY  
PROFESSIONAL FILING  
Los Angeles Superior Court

DEC 22 2011

John A. Allen, Executive Officer/Clerk

John A. Allen, Deputy

11 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
12 **IN AND FOR THE COUNTY OF LOS ANGELES**

13  
14  
15 ISAAC CURRY, individually,

16 Plaintiff,

17 vs.

18 WELLS FARGO BANK, N.A.; and  
19 DOES 1 through 50 inclusive,

20 Defendants.  
21  
22  
23  
24

CASE No. YC066168

**COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE § 17200 *et seq.*;
2. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF CAL. LAB. CODE §§ 510, 551, 552, 1194 AND 1198, *et seq.*; and,
3. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226.

**DEMAND FOR A JURY TRIAL**

CASE ASSIGNED FOR  
ALL PURPOSES TO  
Judge William G. Willett  
Dept. 11 Div.

1 Plaintiff Isaac Curry ("PLAINTIFF"), an individual, alleges on information and belief,  
2 except for his own acts and knowledge, the following:

3  
4 **THE PARTIES**

5 1. Defendant Wells Fargo Bank, N.A. is a diversified financial services company  
6 providing banking, insurance, investments, mortgage, and consumer and commercial finance  
7 through more than 10,000 stores and 12,000 ATMs and the Internet across North America and  
8 internationally. Wells Fargo Bank, N.A. hereinafter also referred to as "WELLS FARGO" or  
9 "DEFENDANT" employs more than 270,000 team members worldwide and has assets of \$1.2  
10 trillion as of 2010.

11 2. According to DEFENDANT's website, the company is headquartered in San  
12 Francisco, California, and maintains the largest number of its banking, mortgage, and brokerage  
13 stores in California. DEFENDANT is the industry's number one home mortgage lender and  
14 ranks first in the number of mortgage stores (2,400) operated nationwide.

15 3. An employer's obligation to pay its employees wages is more than a matter of  
16 private concern between the parties. That obligation is founded on a compelling public policy  
17 judgment that employees are entitled to work a livable number of hours at a livable wage. In  
18 addition, statutes and regulations that compel employers to pay overtime relate to fundamental  
19 issues of social welfare worthy of protection. The requirement to pay overtime wages extends  
20 beyond the benefits individual workers receive because overtime wages discourage employers  
21 from concentrating work in a few overburdened hands and encourage employers to instead hire  
22 additional employees. Especially in today's economic climate, the importance of spreading  
23 available work to reduce unemployment cannot be overestimated.

24 4. As part of their business, WELLS FARGO employs a fleet of so called "Home  
25 Mortgage Consultants." PLAINTIFF, as a Home Mortgage Consultant, was and is primarily  
26 engaged in the core, day-to-day business activities of WELLS FARGO. The Home Mortgage  
27 Consultants sell mortgage loan products. As a Home Mortgage Consultant, PLAINTIFF, in  
28 performing his sales duties, spends virtually all of his time working in a Wells Fargo office.

1 The primary tools PLAINTIFF employs in performing his sales function are the telephone and  
2 the computer. PLAINTIFF, since the inception of his employment with DEFENDANT, also  
3 spends much of his time and energy engaged in the clerical tasks associated with loan  
4 processing.

5 5. As a result, the PLAINTIFF is and has been engaged in a type of work that  
6 requires no exercise of independent judgment or discretion as to any matter of significance.  
7 Therefore, the PLAINTIFF did not have duties or authority with regards to the management or  
8 general business operations of DEFENDANT or DEFENDANT's clients and should therefore  
9 have been properly classified as a non-exempt employee.

10 6. Plaintiff Isaac Curry ("PLAINTIFF") has been employed by WELLS FARGO in  
11 Culver City, California as a Home Mortgage Consultant from March of 2010 to the present.

12 7. The position of Home Mortgage Consultant was represented by WELLS FARGO  
13 to the PLAINTIFF as an exempt and salaried position. On or around May 26, 2011,  
14 PLAINTIFF was reclassified as a non-exempt and hourly employee of DEFENDANT. Over  
15 the entire course of PLAINTIFF's employment with DEFENDANT, he has performed the same  
16 job duties. From the period of March of 2010 until on or around May 26, 2011 (the  
17 "RELEVANT TIME PERIOD"), PLAINTIFF was classified as an exempt and salaried  
18 employee.

19 8. As defined by DEFENDANT's comprehensive corporate policies and  
20 procedures, the duties that the PLAINTIFF primarily engaged in includes selling mortgage loan  
21 products. In addition, the PLAINTIFF is and was also engaged in clerical tasks and paperwork  
22 associated with loan processing in accordance with DEFENDANT's established specific  
23 procedures and protocols which govern and control every aspect of the work performed by the  
24 PLAINTIFF as a Home Mortgage Consultant. These standardized procedures mirror the  
25 realities of the workplace evidencing a uniformity of work among the Home Mortgage  
26 Consultants and negate any exercise of independent judgment and discretion as to any matter  
27 of significance.

28 9. The work schedule for PLAINTIFF was set by DEFENDANT. Generally,

1 during the RELEVANT TIME PERIOD while the PLAINTIFF was classified as an exempt  
2 employee, he worked approximately ten (10) hours each workday and approximately ten (10)  
3 hours of overtime each workweek.

4 10. During the RELEVANT TIME PERIOD, DEFENDANT had not established an  
5 alternative workweek election for the PLAINTIFF for ten (10) to twelve (12) hour workdays.

6 11. During the RELEVANT TIME PERIOD, PLAINTIFF was not provided with  
7 overtime compensation and other benefits for the overtime hours worked as required by law due  
8 to DEFENDANT's unsubstantiated classification of PLAINTIFF as "exempt" by  
9 DEFENDANT.

10 12. As a matter of company policy, practice, and procedure, DEFENDANT had  
11 unlawfully, unfairly and/or deceptively classified PLAINTIFF as exempt, until on or around  
12 May 26, 2011, based on job title alone, failed to pay the required overtime compensation and  
13 otherwise failed to comply with all applicable labor laws with respect to PLAINTIFF.

14 13. The true names and capacities, whether individual, corporate, subsidiary,  
15 partnership, associate or otherwise of Defendants DOES 1 through 50, inclusive, are presently  
16 unknown to the PLAINTIFF who therefore sues these Defendants by such fictitious names  
17 pursuant to Cal. Civ. Proc. Code § 474. The PLAINTIFF will seek leave to amend this  
18 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they  
19 are ascertained. PLAINTIFF is informed and believes, and based upon that information and  
20 belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50,  
21 inclusive, are responsible in some manner for one or more of the events and happenings that  
22 proximately caused the injuries and damages hereinafter alleged.

23 14. The agents, servants and/or employees of the Defendants and each of them  
24 acting on behalf of the Defendants acted within the course and scope of his, her or its authority  
25 as the agent, servant and/or employee of the Defendants, and personally participated in the  
26 conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein.  
27 Consequently, the acts of each Defendants are legally attributable to the other Defendants and  
28 all Defendants are jointly and severally liable to the PLAINTIFF for the loss sustained as a

1 proximate result of the conduct of the Defendants' agents, servants and/or employees.

2  
3 **THE CONDUCT**

4 15. The primary duty required of the PLAINTIFF as a Home Mortgage Consultant  
5 as defined by DEFENDANT was executed by the PLAINTIFF through the performance of non-  
6 exempt labor within a defined skill set.

7 16. Although the PLAINTIFF primarily performed non-exempt labor, DEFENDANT  
8 instituted a blanket classification policy, practice and procedure by which the PLAINTIFF was  
9 classified as exempt from overtime compensation. By reason of this uniform exemption  
10 practice, policy and procedure applicable to the PLAINTIFF, during the RELEVANT TIME  
11 PERIOD, DEFENDANT committed acts of unfair competition in violation of the California  
12 Unfair Competition law, Cal. Bus. & Prof. Code § 17200 (the "UCL"), by engaging in a  
13 company-wide policy, practice and procedure which failed to properly classify the PLAINTIFF  
14 and thereby failed to pay him overtime wages for documented overtime hours worked and  
15 provide him with all legally required meal and rest breaks. The proper classification of the  
16 PLAINTIFF is DEFENDANT's burden. As a result of DEFENDANT's intentional disregard  
17 of the obligation to meet this burden, DEFENDANT failed to pay all required overtime  
18 compensation for work performed by the PLAINTIFF and violated the California Labor Code  
19 and regulations promulgated thereunder as herein alleged over the RELEVANT TIME  
20 PERIOD. In addition, DEFENDANT failed to provide all of the legally required meal and rest  
21 breaks to the PLAINTIFF as required by the applicable Wage Order and Labor Code. On or  
22 around May 26, 2011, DEFENDANT reclassified PLAINTIFF as a non-exempt and hourly  
23 employee and began properly paying him for overtime wages and providing him all legally  
24 required meal and rest breaks.

25 17. DEFENDANT, as a matter of law, has the burden of proving that (a) employees  
26 are properly classified as exempt and that (b) DEFENDANT otherwise complies with  
27 applicable laws. Other than the initial classification of the PLAINTIFF as exempt from being  
28 paid overtime based on job title alone, DEFENDANT had no business policy, practice, or

1 procedure to ensure that the PLAINTIFF was properly classified as exempt, and in fact, as a  
2 matter of corporate policy erroneously and unilaterally classified the PLAINTIFF as exempt  
3 based on job title alone.

4 18. Over the course of his employment with DEFENDANT, including currently, the  
5 PLAINTIFF has primarily performed non-exempt job duties, but during the RELEVANT TIME  
6 PERIOD was nevertheless classified by DEFENDANT as exempt from overtime pay and  
7 worked more than eight (8) hours a day, forty (40) hours a week, and/or on the seventh (7th)  
8 consecutive day of a workweek.

9 19. During the RELEVANT TIME PERIOD, PLAINTIFF was not primarily engaged  
10 in work of a type that was directly related to the management or general business operations of  
11 the employer's customers, when giving these words a fair but narrow construction. PLAINTIFF  
12 was also not primarily engaged in work of a type that was performed at the level of the policy  
13 or management of DEFENDANT. PLAINTIFF was also not primarily engaged in work  
14 requiring knowledge of an advanced type in a field or science or learning customarily acquired  
15 by a prolonged course of specialized intellectual instruction and study, but rather his work  
16 primarily involved the performance of routine clerical activities. The work of a Home  
17 Mortgage Consultant of DEFENDANT is work wherein the PLAINTIFF was and is primarily  
18 engaged in the day-to-day business of WELLS FARGO. The Home Mortgage Consultants sell  
19 mortgage loan products. In addition, the PLAINTIFF was also engaged in clerical tasks, and  
20 paperwork associated with loan processing.

21 20. The fact that the work of the PLAINTIFF may have involved work using a  
22 specialized skill set or technical abilities in a defined technical area does not mean that the  
23 PLAINTIFF is exempt from overtime wages. Indeed, the exercise of discretion and  
24 independent judgment must be more than the use of a highly technical skill set described in a  
25 manual or other sources. The work that the PLAINTIFF was primarily engaged in is the work  
26 that is required to be performed as part of the day-to-day-business activity of DEFENDANT.  
27 As a result, the PLAINTIFF was primarily engaged in work that falls on the production or the  
28 non-exempt administrative sale side of the administrative/production worker dichotomy and

1 should have been properly classified as a non-exempt employee.

2        21. PLAINTIFF was classified as exempt from California overtime and related laws  
3 by DEFENDANT during the RELEVANT TIME PERIOD, however, he did not have  
4 managerial duties or authority. Furthermore, the PLAINTIFF, as a Home Mortgage Consultant,  
5 was, and currently continues to be, tightly controlled by company policy and by his supervisors,  
6 did not exercise discretion or independent judgment as to matters of significance, and his job  
7 duties were not directly related to DEFENDANT's management policies or general business  
8 operation.

9        22. During the RELEVANT TIME PERIOD, PLAINTIFF was classified and treated  
10 by DEFENDANT as exempt. During that time, DEFENDANT failed to take the proper steps  
11 to determine whether the PLAINTIFF was properly classified under the applicable Industrial  
12 Welfare Commission Wage Order (Wage Order 4-2001) and Cal. Lab. Code §§ 510, *et seq.* as  
13 exempt from applicable California labor laws. Since DEFENDANT had, prior to May 26,  
14 2011, affirmatively and wilfully misclassified the PLAINTIFF in compliance with California  
15 labor laws, DEFENDANT's practices violated California law. In addition, DEFENDANT  
16 acted deceptively by falsely and fraudulently telling the PLAINTIFF that he was exempt from  
17 overtime pay when DEFENDANT knew or should have known that this statement was false and  
18 not based on known facts. DEFENDANT also acted unfairly by violating the California labor  
19 laws, and as a result of this policy and practice, DEFENDANT also violated the UCL. In doing  
20 so, DEFENDANT cheated the competition by paying the PLAINTIFF less than the amount  
21 competitors paid who complied with the law and cheated the PLAINTIFF by not paying him  
22 in accordance with California law. In addition, DEFENDANT failed to provide all of the  
23 legally required meal and rest breaks to the PLAINTIFF as required by the applicable Wage  
24 Order and Labor Code. During the RELEVANT TIME PERIOD, DEFENDANT did not have  
25 a policy or practice which provided meal and rest breaks to the PLAINTIFF. As a result,  
26 DEFENDANT's failure to provide the PLAINTIFF with all legally required meal and rest  
27 breaks is evidenced by DEFENDANT's business records which contain no record of these  
28 breaks.



1           23.     DEFENDANT, during the RELEVANT TIME PERIOD, also failed to provide  
2 the PLAINTIFF with a wage statement in writing that accurately sets forth gross wages earned,  
3 all applicable hourly rates in effect during the pay period and the corresponding number of  
4 hours worked at each hourly rate by the PLAINTIFF. This conduct violated California Labor  
5 Code § 226. The pay stubs also did not accurately display anywhere the PLAINTIFF's overtime  
6 hours and applicable rates of overtime pay for the pay period.

7           24.     By reason of this conduct applicable to the PLAINTIFF, during the RELEVANT  
8 TIME PERIOD, DEFENDANT committed acts of unfair competition in violation of the  
9 California Unfair Competition law, Cal. Bus. & Prof. Code § 17200 (the "UCL"), by engaging  
10 in a company-wide policy and procedure which failed to correctly classify the PLAINTIFF as  
11 non-exempt. The proper classification of PLAINTIFF is DEFENDANT's burden. As a result  
12 of DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT  
13 failed to properly calculate and/or pay all required overtime compensation for work performed  
14 by the PLAINTIFF and violated the applicable Wage Order, the California Labor Code and the  
15 regulations promulgated thereunder as herein alleged during the RELEVANT TIME PERIOD.

16  
17                               **JURISDICTION AND VENUE**

18           25.     This Court has jurisdiction over this action pursuant to Cal. Code of Civ. Proc.  
19 § 410.10 and Cal. Business & Professions Code § 17203.

20           26.     Venue is proper in this County pursuant to Cal. Code of Civ. Proc. §§ 395 and  
21 395.5, because PLAINTIFF resides in this County and WELLS FARGO (i) currently maintains  
22 and at all relevant times maintained offices and facilities in this County and/or conducts  
23 substantial business in this County, and (ii) committed the wrongful conduct herein alleged in  
24 this County against PLAINTIFF.



**FIRST CAUSE OF ACTION**

**For Unlawful Business Practices**

**[Cal. Bus. And Prof. Code § 17200 *et seq.*]**

**(By PLAINTIFF Against All Defendants)**

27. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, paragraphs 1 through 26 of this Complaint.

28. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof. Code § 17021.

29. California Business & Professions Code § 17200 *et seq.* (the "UCL") defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

California Business & Professions Code § 17203.

30. By the conduct alleged herein, during the RELEVANT TIME PERIOD, DEFENDANT had engaged in a business practice which violated California law, including but not limited to, Wage Order 4-2001, the California Code of Regulations, and the California Labor Code Sections 226(a), 226.7, 510, 1194 & 1198, and for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

31. By the conduct alleged herein, DEFENDANT's practices during the RELEVANT TIME PERIOD were unlawful and unfair in that these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or substantially injurious to employees, and were without valid justification or utility for which this Court should issue

1 equitable and injunctive relief pursuant to Section 17203 of the California Business &  
2 Professions Code, including restitution of wages wrongfully withheld.

3       32. By the conduct alleged herein, DEFENDANT's practices during the  
4 RELEVANT TIME PERIOD were deceptive and fraudulent in that DEFENDANT's uniform  
5 policy and practice was to represent to PLAINTIFF that he was exempt from overtime pay  
6 when in fact these representations were false and likely to deceive, for which this Court should  
7 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including  
8 restitution of wages wrongfully withheld.

9       33. By the conduct alleged herein, DEFENDANT's practices during the  
10 RELEVANT TIME PERIOD were also unlawful, unfair and deceptive in that DEFENDANT's  
11 employment practices caused the PLAINTIFF to be underpaid during his employment with  
12 DEFENDANT.

13       34. By and through the unlawful and unfair business practices described herein,  
14 during the RELEVANT TIME PERIOD, DEFENDANT had obtained valuable property, money  
15 and services from the PLAINTIFF and had deprived PLAINTIFF of valuable rights and benefits  
16 guaranteed by law and contract, all to the detriment of PLAINTIFF and to the benefit of  
17 DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors who  
18 comply with the law.

19       35. All the acts described herein as violations of, among other things, the California  
20 Labor Code, California Code of Regulations, the Industrial Welfare Commission Wage Orders,  
21 and the related opinions of the Department of Labor, were unlawful, were in violation of public  
22 policy, were immoral, unethical, oppressive, and unscrupulous, and were likely to deceive the  
23 PLAINTIFF, as herein alleged, and thereby constitute deceptive, unfair and unlawful business  
24 practices in violation of Cal. Bus. and Prof. Code § 17200 *et seq.*

25       36. PLAINTIFF is entitled to, and does, seek such relief as may be necessary to  
26 restore to PLAINTIFF the money and property which DEFENDANT has acquired, or of which  
27 the PLAINTIFF has been deprived, by means of the above described unlawful and unfair  
28 business practices, including earned but unpaid wages for all hours worked.

37. Throughout the RELEVANT TIME PERIOD, it was also DEFENDANT's uniform policy and practice to not provide all legally required meal and rest breaks to the PLAINTIFF. During the RELEVANT TIME PERIOD, DEFENDANT failed to provide any compensated work time for failing to provide such breaks to the PLAINTIFF.

38. Therefore, the PLAINTIFF demands on behalf of himself, one (1) hour of pay for each workday in which a meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in which a second meal period was not timely provided for each ten (10) hours of work.

39. PLAINTIFF further demands on behalf of himself, one (1) hour of pay for each workday in which a rest period was not timely provided as required by law.

40. PLAINTIFF is further entitled to, and does, seek a declaration that the described business practices are unlawful, unfair and deceptive.

41. As a result of the unlawful and unfair business practices described herein during the RELEVANT TIME PERIOD, the PLAINTIFF has suffered irreparable legal and economic harm as a result of DEFENDANT's unlawful and unfair business practices.

## **SECOND CAUSE OF ACTION**

### **For Failure To Pay Overtime Compensation**

**[Cal. Lab. Code §§ 510, 551, 552, 1194 and 1198]**

**(By PLAINTIFF Against All Defendants)**

42. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, paragraphs 1 through 38 of this Complaint.

43. Cal. Lab. Code § 510 states in relevant part:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate

1 of pay of an employee.

2 44. Cal. Lab. Code § 551 states that, "Every person employed in any occupation of  
3 labor is entitled to one day's rest therefrom in seven."

4 45. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his  
5 employees to work more than six days in seven."

6 46. Cal. Lab. Code § 515(d) provides: "For the purpose of computing the overtime  
7 rate of compensation required to be paid to a nonexempt full-time salaried employee, the  
8 employee's regular hourly rate shall be 1/40th of the employee's weekly salary."

9 47. Cal. Lab. Code § 1194 states:

10 Notwithstanding any agreement to work for a lesser wage, any employee  
11 receiving less than the legal minimum wage or the legal overtime compensation  
12 applicable to the employee is entitled to recover in a civil action the unpaid  
balance of the full amount of this minimum wage or overtime compensation,  
including interest thereon, reasonable attorney's fees, and costs of suit.

13 48. Cal. Lab. Code § 1198 provides: "The maximum hours of work and the  
14 standard conditions of labor fixed by the commission shall be the maximum hours of work and  
15 the standard conditions of labor for employees. The employment of any employee for longer  
16 hours than those fixed by the order or under conditions of labor prohibited by the order is  
17 unlawful."

18 49. During the RELEVANT TIME PERIOD, DEFENDANT had intentionally and  
19 uniformly designated certain employees as "exempt" employees, by their job title and without  
20 regard to DEFENDANT's realistic expectations and actual overall requirements of the job,  
21 including the PLAINTIFF who worked on the production side of DEFENDANT's business.  
22 This was done in an illegal attempt to avoid payment of overtime wages and other benefits in  
23 violation of the California Labor Code and Industrial Welfare Commission requirements.

24 50. For an employee to be exempt as a bona fide "executive," all the following  
25 criteria must be met and DEFENDANT has the burden of proving that:

26 (a) The employee's primary duty must be management of the enterprise, or of a  
27 customarily recognized department or subdivision; and,  
28

- 1 (b) The employee must customarily and regularly direct the work of at least two (2)
- 2 or more other employees; and,
- 3 (c) The employee must have the authority to hire and fire, or to command
- 4 particularly serious attention to his or her recommendations on such actions
- 5 affecting other employees; and,
- 6 (d) The employee must customarily and regularly exercise discretion and
- 7 independent judgment; and,
- 8 (e) The employee must be primarily engaged in duties which meet the test of
- 9 exemption.

10 PLAINTIFF was not an executive because PLAINTIFF failed and continues to fail to meet the  
11 requirements of being an "executive" within the meaning of the applicable Wage Order.

12 51. For an employee to be exempt as a bona fide "administrator," all of the  
13 following criteria must be met and DEFENDANT has the burden of proving that:

- 14 (a) The employee must perform office or non-manual work directly related to
- 15 management policies or general business operation of the employer; and,
- 16 (b) The employee must customarily and regularly exercise discretion and
- 17 independent judgment; and,
- 18 (c) The employee must regularly and directly assist a proprietor or an exempt
- 19 administrator; or,
- 20 (d) The employee must perform, under only general supervision, work requiring
- 21 special training, experience, or knowledge, or,
- 22 (e) The employee must execute special assignments and tasks under only general
- 23 supervision; and,
- 24 (f) The employee must be primarily engaged in duties which meet the test of
- 25 exemption.

26 PLAINTIFF was not an administrator because PLAINTIFF failed to meet the requirements for  
27 being an "administrator" under the applicable Wage Order.

1           52. The Industrial Welfare Commission, in Wage Order 4-2001, at section  
2 (1)(A)(3), and Labor Code § 515 also set forth the requirements which must be complied with  
3 to place an employee in the "professional" exempt category. For an employee to be exempt as  
4 a bona fide "professional," all the following criteria must be met and DEFENDANT has the  
5 burden of proving that:

6           (a) The employee is primarily engaged in an occupation commonly recognized as a  
7 learned or artistic profession. For the purposes of this subsection, "learned or  
8 artistic profession" means an employee who is primarily engaged in the  
9 performance of:

- 10           1) Work requiring knowledge of an advanced type in a field or science or  
11 learning customarily acquired by a prolonged course of specialized  
12 intellectual instruction and study, as distinguished from a general  
13 academic education and from an apprenticeship, and from training in the  
14 performance of routine mental, manual, or physical processes, or work  
15 that is an essential part or necessarily incident to any of the above work;  
16 or,  
17           2) Work that is original and creative in character in a recognized field of  
18 artistic endeavor, and the result of which depends primarily on the  
19 invention, imagination or talent of the employee or work that is an  
20 essential part of or incident to any of the above work; and,  
21           3) Whose work is predominately intellectual and varied in character (as  
22 opposed to routine mental, manual, mechanical, or physical work) and is  
23 of such character cannot be standardized in relation to a given period of  
24 time.

25           (b) The employee must customarily and regularly exercise discretion and  
26 independent judgment; and,

27           (c) The employee earns a monthly salary equivalent to no less than two (2) times the  
28

1 state minimum wage for full-time employment.

2 PLAINTIFF was not a professional because PLAINTIFF failed to meet the requirements of  
3 being a "professional" within the meaning of the applicable Wage Order.

4 53. PLAINTIFF does not fit the definition of an exempt executive, administrative,  
5 or professional employee because:

6 (a) PLAINTIFF did not work as an executive or administrator; and,

7 (b) The professional exemption does not apply to the PLAINTIFF because  
8 PLAINTIFF did not meet all the applicable requirements to work under the  
9 professional exemption for the reasons set forth above in this Complaint.

10 54. The PLAINTIFF worked more than eight (8) hours in a workday, forty (40) hours  
11 in a workweek, and/or worked on the seventh (7th) consecutive day of a workweek.

12 55. During the RELEVANT TIME PERIOD, DEFENDANT failed to pay the  
13 PLAINTIFF overtime compensation for the hours PLAINTIFF worked in excess of the  
14 maximum hours permissible by law as required by Cal. Lab. Code §§ 510 and 1198, even  
15 though the PLAINTIFF was regularly required to work, and did in fact work, overtime hours.

16 56. By virtue of DEFENDANT's unlawful failure to pay additional compensation  
17 to the PLAINTIFF for PLAINTIFF's overtime hours during the RELEVANT TIME PERIOD,  
18 the PLAINTIFF has suffered an economic injury in amounts which are presently unknown to  
19 PLAINTIFF and which will be ascertained according to proof at trial.

20 57. DEFENDANT knew or should have known that during the RELEVANT TIME  
21 PERIOD the PLAINTIFF was misclassified as exempt and DEFENDANT systematically  
22 elected, either through intentional malfeasance or gross nonfeasance, not to pay PLAINTIFF  
23 for PLAINTIFF's overtime labor as a matter of uniform corporate policy, practice and  
24 procedure.

25 58. Therefore, the PLAINTIFF requests recovery of overtime compensation  
26 according to proof, interest, costs, as well as the assessment of any statutory penalties against  
27 DEFENDANT, in a sum as provided by the California Labor Code and/or other statutes.

28 59. In performing the acts and practices herein alleged in violation of labor laws



1 and refusing to provide the requisite overtime compensation, during the RELEVANT TIME  
 2 PERIOD, DEFENDANT acted intentionally, oppressively, and maliciously toward the  
 3 PLAINTIFF with a conscious and utter disregard of PLAINTIFF's legal rights, or the  
 4 consequences to PLAINTIFF, and with the despicable intent of depriving PLAINTIFF of his  
 5 property and legal rights and otherwise causing PLAINTIFF injury in order to increase  
 6 corporate profits at the expense of the PLAINTIFF.

### 7 8 **THIRD CAUSE OF ACTION**

#### 9 **For Failure to Provide Accurate Itemized Statements**

10 **[Cal. Lab. Code § 226]**

11 **(By PLAINTIFF Against All Defendants)**

12 60. PLAINTIFF realleges and incorporates by this reference, as though fully set forth  
 13 herein, paragraphs 1 through 56 of this Complaint.

14 61. Cal. Labor Code § 226 provides that an employer must furnish employees  
 15 with an "accurate itemized" statement in writing showing:

16 (1) gross wages earned,

17 (2) total hours worked by the employee, except for any employee whose compensation  
 18 is solely based on a salary and who is exempt from payment of overtime under  
 19 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare  
 20 Commission,

21 (3) the number of piecerate units earned and any applicable piece rate if the employee  
 22 is paid on a piece-rate basis,

23 (4) all deductions, provided that all deductions made on written orders of the employee  
 24 may be aggregated and shown as one item,

25 (5) net wages earned,

26 (6) the inclusive dates of the period for which the employee is paid,

27 (7) the name of the employee and his or her social security number, except that by  
 28 January 1, 2008, only the last four digits of his or her social security number or an



1 employee identification number other than a social security number may be shown on  
2 the itemized statement,

3 (8) the name and address of the legal entity that is the employer, and

4 (9) all applicable hourly rates in effect during the pay period and the corresponding  
5 number of hours worked at each hourly rate by the employee.

6 62. During the RELEVANT TIME PERIOD, DEFENDANT violated Labor Code  
7 § 226 in that DEFENDANT failed to provide an accurate wage statement in writing that  
8 properly and accurately itemized the number of hours worked by the PLAINTIFF at the  
9 effective regular rates of pay and the effective overtime rates of pay.

10 63. DEFENDANT knowingly and intentionally failed to comply with Labor Code  
11 § 226, causing damages to the PLAINTIFF. These damages include, but are not limited to,  
12 costs expended calculating the true hours worked and the amount of employment taxes which  
13 were not properly paid to state and federal tax authorities. These damages are difficult to  
14 estimate. Therefore, the PLAINTIFF may elect to recover liquidated damages of \$50.00 for the  
15 initial pay period in which the violation occurred, and \$100.00 for each violation in subsequent  
16 pay period pursuant to Labor Code § 226, in an amount according to proof at the time of trial  
17 (but in no event more than \$4,000.00 for the PLAINTIFF).

#### 18 19 PRAYER FOR RELIEF

20 WHEREFOR, the PLAINTIFF prays for judgment against each Defendant, jointly and  
21 severally, as follows:

22 1. On the UCL claim:

23 A) An order requiring DEFENDANT to correctly calculate and pay all wages and  
24 all sums unlawfully withheld from compensation due to the PLAINTIFF; and,

25 B) Restitutionary disgorgement of DEFENDANT's ill-gotten gains for restitution  
26 of the sums incidental to DEFENDANT's violations due to the PLAINTIFF; and,

27 2. On the California Labor Code claims:

28 A) Compensatory damages, according to proof at trial, including compensatory

1 damages for overtime compensation due to the PLAINTIFF plus interest thereon  
2 at the statutory rate; and,

3 B) The greater of all actual damages or fifty dollars (\$50) for the initial pay period  
4 in which a violation occurs and one hundred dollars (\$100) for each violation in  
5 a subsequent pay period, not exceeding an aggregate penalty of four thousand  
6 dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226.

7 3. On all claims:

8 A) An award of interest, including prejudgment interest at the legal rate;

9 B) Such other and further relief as the Court deems just and equitable; and,

10 C) An award of penalties and cost of suit, but neither this prayer nor any other  
11 allegation or prayer in this Complaint is to be construed as a request, under any  
12 circumstance, that would result in a request for attorneys' fees under Cal. Lab.  
13 Code § 218.5.

14 Dated: December 21, 2011

BLUMENTHAL, NORDREHAUG & BHOWMIK

15  
16 By: 


Norman B. Blumenthal  
Attorneys for Plaintiff

**DEMAND FOR JURY TRIAL**

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: December 21, 2011

BLUMENTHAL, NORDREHAUG & BHOWMIK

By:   
Norman B. Blumenthal  
Attorneys for Plaintiff

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# **EXHIBIT B**

COPY

**CONFORMED COPY**

OF ORIGINAL FILED  
Los Angeles Superior Court

FEB 24 2012

John A. Clarke, Executive Officer/Clerk

L. Hicks, Deputy

1 LINDBERGH PORTER, Bar No. 100091  
2 LITTLER MENDELSON, P.C.  
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4 20th Floor  
5 San Francisco, CA 94108.2693  
6 Telephone: 415.433.1940  
7 Fax No.: 415.399.8490

8 Attorneys for Defendant  
9 WELLS FARGO BANK, N.A.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES

12 ISAAC CURRY, individually

13 Plaintiff,

14 v.

15 WELLS FARGO BANK, N.A.; and DOES  
16 1 through 50, inclusive,

17 Defendants.

Case No. YC066168

ASSIGNED FOR ALL PURPOSES TO  
JUDGE WILLIAM G. WILLETT

DEFENDANT WELLS FARGO BANK'S  
ANSWER TO COMPLAINT

Trial Date: None Set  
Complaint Filed: December 22, 2011



1 Defendant Wells Fargo Bank, N.A. ("Wells Fargo") hereby answers the unverified  
 2 Complaint filed by Plaintiff Isaac Curry ("Plaintiff") in the above-referenced action as follows:

3  
 4 **GENERAL DENIAL**

5 Pursuant to the provisions of the California Code of Civil Procedure section  
 6 431.30(d), Wells Fargo denies generally and specifically each and every allegation contained in the  
 7 Complaint. In addition, Wells Fargo denies Plaintiff has sustained, or will sustain, any loss or  
 8 damage in the manner or amount alleged, or otherwise, by reason of any act or omission, or any  
 9 other conduct or absence thereof on the part of Wells Fargo.

10 **AFFIRMATIVE AND OTHER DEFENSES**

11  
 12 Wells Fargo asserts the following affirmative and other defenses, which it has  
 13 designated, collectively, as "affirmative defenses." Wells Fargo's designating its defenses as  
 14 "affirmative" is not intended in any way to alter Plaintiff's burden of proof with regard to any  
 15 element of his cause of action.

16 **FIRST AFFIRMATIVE DEFENSE**

17 1. The Complaint and each and every alleged cause of action therein fail to state  
 18 facts sufficient to constitute a cause of action upon which relief can be granted.

19 **SECOND AFFIRMATIVE DEFENSE**

20 2. The Complaint and each purported cause of action alleged therein are barred  
 21 because Plaintiff was or is properly classified as an exempt employee under the outside sales,  
 22 commissioned sales, executive, administrative, and/or combination exemptions in California's Labor  
 23 Code and wage and hour regulations.

24 **THIRD AFFIRMATIVE DEFENSE**

25 3. Plaintiff is precluded from recovering any amounts from Wells Fargo where  
 26 Wells Fargo has paid that Plaintiff all sums legally due.

1 **FOURTH AFFIRMATIVE DEFENSE**

2 4. The Complaint and each purported cause of action alleged therein are barred  
3 because Plaintiff misperformed his duties and/or failed to perform the duties which Wells Fargo  
4 realistically and reasonably expected Plaintiff to perform.

5 **FIFTH AFFIRMATIVE DEFENSE**

6 5. Some or all of the disputed time for which Plaintiff seeks to recover (of wages  
7 purportedly owed) is not compensable pursuant to the doctrine of *de minimis non curat lex*.

8 **SIXTH AFFIRMATIVE DEFENSE**

9 6. To the extent the amount of any punitive damages awarded are unreasonable,  
10 excessive, arbitrary, or disproportionate to the amount of harm to Plaintiffs and to the general  
11 damages recovered, Wells Fargo's rights under the Fifth, Seventh, Eighth and Fourteenth  
12 Amendments of the United States Constitution and Article 1 of the California Constitution will be  
13 violated.

14 **SEVENTH AFFIRMATIVE DEFENSE**

15 7. Plaintiff is not entitled to any penalty award under the California Business and  
16 Professions Code § 17200, *et seq.*, the California Labor Code or any Wage Order because Wells  
17 Fargo did not willfully fail to comply with the compensation provisions of the California Labor  
18 Code, or the applicable Wage Order, but rather acted in good faith and had reasonable grounds for  
19 believing it did not violate them.

20 **EIGHTH AFFIRMATIVE DEFENSE**

21 8. The Complaint and each purported cause of action alleged therein are barred  
22 to the extent Plaintiff has released Wells Fargo from any claim Plaintiff may have against it.

23 **NINTH AFFIRMATIVE DEFENSE**

24 9. Wells Fargo alleges that Plaintiff sustained no injury from any alleged failure  
25 by Wells Fargo to comply with Labor Code section 226.

26 **TENTH AFFIRMATIVE DEFENSE**

27 10. Wells Fargo alleges that Plaintiff was exempt from payment of overtime  
28 wages pursuant to the administrative, outside sales, commissioned sales, and/or combination  
3.

1 exemptions and, pursuant to Labor Code section 206(a), Plaintiffs were not entitled, *inter alia*, to a  
 2 wage statement specifying an hourly rate and number of hours worked.

3 **ELEVENTH AFFIRMATIVE DEFENSE**

4 11. Wells Fargo alleges that its electronic wage statements satisfy Labor Code  
 5 section 226(a).

6 **TWELFTH AFFIRMATIVE DEFENSE**

7 12. Wells Fargo alleges that, even assuming *arguendo*, Plaintiffs were not  
 8 provided with a proper itemized statement of wages and deductions, or that an electronic wage  
 9 statement does not comply with the Labor Code, Plaintiff is not entitled to recover damages or  
 10 penalties because Wells Fargo's alleged failure to comply with California Labor Code section 226(a)  
 11 was not a "knowing and intentional failure" under California Labor Code section 226( e).

12 **THIRTEENTH AFFIRMATIVE DEFENSE**

13 13. Wells Fargo alleges that each purported cause of action set forth in the  
 14 Complaint is barred in whole or in part by the applicable statute(s) of limitation, including without  
 15 limitation, the three-year limitations period contained in California Code of Civil Procedure section  
 16 338(a); the one-year limitations period governing recovery of statutory penalties contained in  
 17 California Code of Civil Procedure section 340(1); and/or the four year limitations period found in  
 18 Business and Professions Code section 17208.

19 **FOURTEENTH AFFIRMATIVE DEFENSE**

20 14. Wells Fargo alleges that Plaintiff's Complaint, to the extent it seeks punitive  
 21 or exemplary damages pursuant to Section 3294 of the California Civil Code, violates Wells Fargo's  
 22 rights to procedural due process under the Fifth, Seventh, Eighth and Fourteenth Amendment to the  
 23 United States Constitution and the Constitution of the State of California and, therefore, fails to state  
 24 a cause of action upon which either punitive or exemplary damages can be awarded.

25 **FIFTEENTH AFFIRMATIVE DEFENSE**

26 15. Wells Fargo alleges that in the event damages, injuries and/or losses were  
 27 suffered by Plaintiff, which Wells Fargo denies, such damages, injuries and/or losses resulted from  
 28 the negligence of parties, persons and/or entities other than Wells Fargo, and the liability of Wells



1 Fargo, if any, is limited in direct proportion to the percentage of fault actually attributed to Wells  
 2 Fargo pursuant to applicable law(s).

3 **SIXTEENTH AFFIRMATIVE DEFENSE**

4 16. Wells Fargo alleges that it had a good faith and reasonable belief that it was in  
 5 compliance with applicable law and that, accordingly no liquidated damages should be awarded  
 6 Plaintiff for any violation thereof that may be found to exist.

7 **SEVENTEENTH AFFIRMATIVE DEFENSE**

8 17. Wells Fargo alleges that it is informed and believes that a reasonable  
 9 opportunity for investigation and discovery will reveal, and on that basis alleges, Plaintiff has failed  
 10 to exercise reasonable care to mitigate his damages, if any were suffered, and that his rights to  
 11 recover against Wells Fargo should be reduced and/or eliminated by such a failure.

12 **EIGHTEENTH AFFIRMATIVE DEFENSE**

13 18. Wells Fargo is informed and believes that a reasonable opportunity for  
 14 investigation and discovery will reveal, and on that basis alleges, the Complaint and each cause of  
 15 action set forth therein are barred by the equitable doctrines of waiver or estoppel, or laches, or  
 16 unclean hands. Wells Fargo reserves the right to amend its Answer upon further investigation and  
 17 discovery of facts supporting this defense.

18 **NINETEENTH AFFIRMATIVE DEFENSE**

19 19. Wells Fargo is informed and believes that a reasonable opportunity for  
 20 investigation and discovery will reveal and, on that basis, alleges Plaintiff's claims are barred by his  
 21 own breach of the duties owed to Wells Fargo under California Labor Code sections 2854, 2856,  
 22 2857, 2858 and/or 2859.

23 **TWENTIETH AFFIRMATIVE DEFENSE**

24 20. As a separate and distinct affirmative defense to the Complaint, Wells Fargo  
 25 alleges that the Complaint and each cause of action set forth therein are barred because Plaintiff  
 26 failed to timely and completely exhaust her requisite administrative and/or contractual remedies  
 27 available to her under the California Labor Code prior to commencing this action.

28 ///

1 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

2 21. As a separate and distinct affirmative defense to the Complaint, Wells Fargo  
3 is informed and believes that a reasonable opportunity for investigation and discovery will reveal  
4 and, on that basis, alleges some or all of certain hours claimed by Plaintiff are not "hours worked"  
5 within the meaning of any Wage Order(s) of the California Industrial Welfare Commission and/or  
6 under applicable California law, so that overtime compensation need not be paid for those hours.

7 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

8 22. As a separate and distinct affirmative defense to the Complaint, Wells Fargo  
9 alleges there exists a bona fide dispute as to whether any further compensation is actually due to  
10 Plaintiff and, if so, the amount thereof.

11 **ADDITIONAL AFFIRMATIVE AND OTHER DEFENSES**


12 23. Wells Fargo presently has insufficient knowledge or information upon which  
13 to form a belief as to whether there may be additional, as yet unstated, defenses and reserves the  
14 right to assert additional defenses or affirmative defenses in the event discovery indicates such  
15 defenses are appropriate.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Wells Fargo prays for relief as follows:

- 18 1. That Plaintiff take nothing and that the Complaint be dismissed in its entirety  
19 with prejudice;  
20 2. That judgment be entered in Wells Fargo's favor;  
21 3. That Wells Fargo be awarded such other and further relief as the Court deems  
22 just and proper.

23 Dated: February 24, 2012

24  
25   
26 LINDBERGH PORTER ASH  
27 LITTLER MENDELSON, P.C.  
28 Attorneys for Defendant  
WELLS FARGO BANK, N.A.

Firmwide:109497556.1 051995.1000

6.

**PROOF OF SERVICE**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 650 California Street, 20th Floor, San Francisco, California 94108.2693. On February 24, 2012, I served the within document(s):

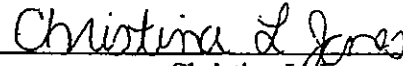
**DEFENDANT WELLS FARGO BANK'S ANSWER TO COMPLAINT**

- ☐ By facsimile transmission at or about \_\_\_\_\_ on that date. This document was transmitted by using a facsimile machine that complies with California Rules of Court Rule 2003(3), telephone number 415.399.8490. The transmission was reported as complete and without error. A copy of the transmission report, properly issued by the transmitting machine, is attached. The names and facsimile numbers of the person(s) served are as set forth below.
- ☒ by placing a true copy of the document(s) listed above for collection and mailing following the firm's ordinary business practice in a sealed envelope with postage thereon fully prepaid for deposit in the United States mail at San Francisco, California addressed as set forth below.
- ☐ by depositing a true copy of the same enclosed in a sealed envelope, with delivery fees provided for, in an overnight delivery service pick up box or office designated for overnight delivery, and addressed as set forth below.
- ☐ **COURTESY COPY** - by e-mail or electronic transmission to the person(s) at the e-mail addresses as indicated on the service list below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Norman Blumenthal  
 Kyle R. Nordrehaug  
 Aparajit Bhowmik  
 Blumenthal, Nordrehaug & Bhowmik  
 2255 Calle Clara  
 La Jolla, CA 92037  
 Facsimile: 858.551.1232

I am readily familiar with the firm's practice of collection and processing correspondence for mailing and for shipping via overnight delivery service. Under that practice it would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited in an overnight delivery service pick-up box or office on the same day with postage or fees thereon fully prepaid in the ordinary course of business.

1 I declare under penalty of perjury under the laws of the State of California that the  
2 above is true and correct. Executed on February 24, 2012, at San Francisco, California.

3  
4   
5 Christina L. Jones

6 Firmwide:109515429.1 051995.1000  
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# **EXHIBIT C**

**CONFORMED COPY**  
**OF ORIGINAL FILED**  
 Los Angeles Superior Court

## NOTICE SENT TO:

BLUMENTHAL, NORMAN B.  
 2255 CALLE CLARA  
 LA JOLLA CA 92037

FILE STAMP

MAY 02 2012

JOHN A. CLARKE, CLERK

BY H. RODGERS, DEPUTY

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

ISAAC CURRY

Plaintiff(s),

VS.

WELLS FARGO BANK, N.A.

Defendant(s).

CASE NUMBER

YC066168

**Notice of Case Reassignment and of  
 Order for Plaintiff to Give Notice**

**TO THE PLAINTIFF(S) AND PLAINTIFF'S ATTORNEY OF RECORD or PLAINTIFF(S) IN  
 PROPRIA PERSONA:**

YOU ARE HEREBY NOTIFIED that effective May 29, 2012, an order was made that the above-entitled action, previously assigned to William G. Willett, is now and shall be assigned to Laura C. Ellison as an Individual Calendar (IC), direct calendaring judge for all purposes, including trial, in Department A. (See Chapter 7, Los Angeles Court Rules.) All matters on calendar in this case will remain set on the dates previously noticed, in the Department indicated above unless otherwise ordered by the court.

NOTICE IS FURTHER GIVEN that the order directs that plaintiff and counsel for the plaintiff shall give notice of this all purpose case assignment by serving a copy of this Notice on all parties to this action within 10 days of service of this Notice by the court, and file proof of service thereof within 12 days of this Notice.

**CLERK'S CERTIFICATE OF MAILING**

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Case Reassignment and of Order for Plaintiff to Give Notice upon each party or counsel named above by depositing in the United States mail at the courthouse in Torrance, California, one copy of the original filed/entered herein in a separate envelope to each address as shown above with the postage thereon fully prepaid.

Dated: May 2, 2012

JOHN A. CLARKE, Executive Officer/  
 Clerk of the Superior Court

By H. RODGERS, Deputy

**NOTICE OF CASE REASSIGNMENT AND OF ORDER FOR PLAINTIFF TO GIVE NOTICE**

# **EXHIBIT D**

|  |  |  |
|--|--|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):<br>Lindbergh Porter, Jr. Bar No. 100091<br>Mary D. Walsh, Bar No. 197039<br>Littler Mendelson, P.C.<br>850 California Street, 20 <sup>th</sup> Floor, San Francisco, CA 94108<br>TELEPHONE NO.: 415.433.1940 FAX NO. (Optional): 415.399.8490<br>E MAIL ADDRESS (Optional):<br>ATTORNEY FOR (name): Defendant Wells Fargo Bank, N.A. |  | CM-110<br>FOR COURT USE ONLY<br><br><b>CONFORMED COPY</b><br>OF ORIGINAL FILED<br>Los Angeles Superior Court<br><br><b>MAY 15 2012</b><br><br>John A. Clarke, Executive Officer/Clerk<br><br>By Lanelle M. Galindo, Deputy |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles<br>STREET ADDRESS: 825 Maple Avenue<br>MAILING ADDRESS:<br>CITY AND ZIP CODE: Torrance, CA 90503<br>BRANCH NAME: Southwest District  |  |  |
| PLAINTIFF/PETITIONER: Isaac Curry<br>DEFENDANT/RESPONDENT: Wells Fargo Bank, N.A.  |  |  |
| (Check one): <input checked="" type="checkbox"/> <b>CASE MANAGEMENT STATEMENT</b><br><input checked="" type="checkbox"/> <b>UNLIMITED CASE</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>LIMITED CASE</b> (Amount demanded is \$25,000 or less)   |  | CASE NUMBER:<br>YC066168   |
| A CASE MANAGEMENT CONFERENCE is scheduled as follows:<br>Date: May 31, 2012 Time: 8:30 AM Dept.: 11 DIV.: Room:<br>Address of court (if different from the address above):<br><input checked="" type="checkbox"/> Notice of Intent to Appear by Telephone, by (name): Lindbergh Porter and Mary Walsh  |  |  |

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. Party or parties (answer one):
  - a. ☒ This statement is submitted by party (name): Wells Fargo Bank, N.A.
  - b. ☐ This statement is submitted jointly by parties (names):
2. Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)
  - a. The complaint was filed on (date):
  - b. ☐ The cross-complaint, if any, was filed on (date):
3. Service (to be answered by plaintiffs and cross-complainants only)
  - a. ☐ All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
  - b. ☐ The following parties named in the complaint or cross-complaint
    - (1) ☐ have not been served (specify names and explain why not):
    - (2) ☐ have been served but have not appeared and have not been displaced (specify names):
    - (3) ☐ have had a default entered against them (specify names):
  - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):
4. Description of case
  - a. Type of case in ☒ complaint ☐ cross-complaint (Describe, including causes of action):



CM-110

|  |                          |
|--|--------------------------|
| PLAINTIFF/PETITIONER: Isaac Curry            | CASE NUMBER:<br>YC066168 |
| DEFENDANT/RESPONDENT: Wells Fargo Bank, N.A. |                          |

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

Plaintiff, Isaac Curry, is employed by Wells Fargo as a Home Mortgage Consultant. Plaintiff filed a Complaint alleging causes of action for: (1) unfair competition in violation of California Business and Professions Code Section 17200; (2) failure to pay overtime; and (3) failure to provide itemized wage statements. Wells Fargo contends that it paid Plaintiff all wages owed. Wells Fargo further denies all of Plaintiff's claims and denies that Plaintiff is entitled to any of the remedies he seeks.

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request ☐ a jury trial ☐ a nonjury trial. (If more than one party, provide the name of each party requesting a jury trial):

6. Trial date

a. ☐ The trial has been set for (date):

b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):

c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):  
November 19-23, 2012; January 1-21, 2013; March 16-31, 2013

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

a. ☒ days (specify number): 5-7

b. ☐ hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

f. Fax number:

e. E-mail address:

g. Party represented:

☐ Additional representation is described in Attachment 8.

9. Preference

☐ This case is entitled to preference (specify code section):

10. Alternative dispute resolution (ADR)

a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

(1) For parties represented by counsel: Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.

b. **Referral to judicial arbitration or civil action mediation (if available).**

(1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.

(2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

(3) ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. (specify exemption):

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|  |                          |
|--|--------------------------|
| PLAINTIFF/PETITIONER: Isaac Curry            | CASE NUMBER:<br>YC066168 |
| DEFENDANT/RESPONDENT: Wells Fargo Bank, N.A. |                          |

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

|                                     | The party or parties completing this form are willing to participate in the following ADR processes ( <i>check all that apply</i> ): | If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes ( <i>attach a copy of the parties' ADR stipulation</i> ):   |
|-------------------------------------|--|--|
| (1) Mediation                       | <input type="checkbox"/>   | <input type="checkbox"/> Mediation session not yet scheduled<br><input type="checkbox"/> Mediation session scheduled for (date):<br><input type="checkbox"/> Agreed to complete mediation by (date):<br><input type="checkbox"/> Mediation completed on (date):  |
| (2) Settlement conference           | <input checked="" type="checkbox"/>  | <input checked="" type="checkbox"/> Settlement conference not yet scheduled<br><input type="checkbox"/> Settlement conference scheduled for (date):<br><input type="checkbox"/> Agreed to complete settlement conference by (date):<br><input type="checkbox"/> Settlement conference completed on (date): |
| (3) Neutral evaluation              | <input type="checkbox"/>   | <input type="checkbox"/> Neutral evaluation not yet scheduled<br><input type="checkbox"/> Neutral evaluation scheduled for (date):<br><input type="checkbox"/> Agreed to complete neutral evaluation by (date):<br><input type="checkbox"/> Neutral evaluation completed on (date):                        |
| (4) Nonbinding judicial arbitration | <input type="checkbox"/>   | <input type="checkbox"/> Judicial arbitration not yet scheduled<br><input type="checkbox"/> Judicial arbitration scheduled for (date):<br><input type="checkbox"/> Agreed to complete judicial arbitration by (date):<br><input type="checkbox"/> Judicial arbitration completed on (date):                |
| (5) Binding private arbitration     | <input type="checkbox"/>   | <input type="checkbox"/> Private arbitration not yet scheduled<br><input type="checkbox"/> Private arbitration scheduled for (date):<br><input type="checkbox"/> Agreed to complete private arbitration by (date):<br><input type="checkbox"/> Private arbitration completed on (date):                    |
| (6) Other ( <i>specify</i> ):       | <input type="checkbox"/>   | <input type="checkbox"/> ADR session not yet scheduled<br><input type="checkbox"/> ADR session scheduled for (date):<br><input type="checkbox"/> Agreed to complete ADR session by (date):<br><input type="checkbox"/> ADR completed on (date):  |

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|  |                          |
|--|--------------------------|
| PLAINTIFF/PETITIONER: Isaac Curry            | CASE NUMBER:<br>YC066168 |
| DEFENDANT/RESPONDENT: Wells Fargo Bank, N.A. |                          |

**11. Insurance**

- a. ☐ Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (*explain*):

**12. Jurisdiction**

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other (*specify*):

Status:

**13. Related cases, consolidation, and coordination**

- a. ☐ There are companion, underlying, or related cases.
- (1) Name of case:
- (2) Name of court:
- (3) Case number:
- (4) Status:
- ☐ Additional cases are described in Attachment 13a.
- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (*name party*):

**14. Bifurcation**

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

**15. Other motions**

- ☒ The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):  
Defendant anticipates filing a motion for summary judgment, or in the alternative, motion for summary adjudication.

**16. Discovery**

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

| <u>Party</u> | <u>Description</u>           | <u>Date</u>    |
|--------------|------------------------------|----------------|
| Plaintiff    | Written Discovery            | July 2012      |
| Defendant    | Plaintiff's Deposition       | August 2012    |
| Defendant    | Written Discovery            | September 2012 |
| Defendant    | Discovery from Third Parties | October 2012   |

- c. ☒ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):  
The parties are conferring regarding a stipulated protective order to cover production of documents containing Defendant's confidential and proprietary information.

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|  |                          |
|--|--------------------------|
| PLAINTIFF/PETITIONER: Isaac Curry            | CASE NUMBER:<br>YC066168 |
| DEFENDANT/RESPONDENT: Wells Fargo Bank, N.A. |                          |

**17. Economic litigation**

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

**18. Other issues**

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

**19. Meet and confer**

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

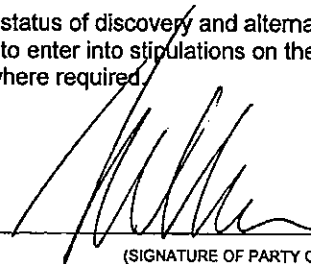
20. Total number of pages attached (*if any*): 0

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: May 14, 2012

Mary D. Walsh

(TYPE OR PRINT NAME)

▶ 

(SIGNATURE OF PARTY OR ATTORNEY)

▶ \_\_\_\_\_

(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

Firmwide:111388427.1 051995.1048

**PROOF OF SERVICE BY MAIL**

I am employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 650 California Street, 20th Floor, San Francisco, California 94108.2693. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On May 15, 2012, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

**CASE MANAGEMENT STATEMENT**

in a sealed envelope, postage fully paid, addressed as follows:

Norman Blumenthal  
Kyle R. Nordrehaug  
Aparajit Bhowmik  
Blumenthal, Nordrehaug & Bhowmik  
2255 Calle Clara  
La Jolla, CA 92037

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 15, 2012, at San Francisco, California.

  
Cynthia K. Montague

# **EXHIBIT E**

**INSTRUCTIONS:** All applicable boxes must be checked, and the specified information must be provided.

- Form Adopted for Mandatory Use  
Judicial Council of California  
CM-110 (Rev. July 1, 2011)

Page 1 of 5  
Cal. Rules of Court,  
rules 3.720–3.730  
[www.courts.ca.gov](http://www.courts.ca.gov)

CM-110

|  |              |
|--|--------------|
| PLAINTIFF/PETITIONER: ISAAC CURRY            | CASE NUMBER: |
| DEFENDANT/RESPONDENT: WELLS FARGO BANK, N.A. | YC066168     |

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*  
 Plaintiff alleges that Defendant misclassified him as exempt from receiving overtime wages. Plaintiff worked for Defendant as a "Home Mortgage Consultant" and was classified from exempt from March of 2010 until he was reclassified as non-exempt on May 26, 2011.
- ☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*
5. **Jury or nonjury trial**  
 The party or parties request ☒ a jury trial ☐ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*
6. **Trial date**  
 a. ☐ The trial has been set for (date):  
 b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain):*  
 c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*
7. **Estimated length of trial**  
 The party or parties estimate that the trial will take *(check one)*:  
 a. ☒ days *(specify number):* 7  
 b. ☐ hours *(short causes) (specify):*
8. **Trial representation (to be answered for each party)**  
 The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:  
 a. Attorney:  
 b. Firm:  
 c. Address:  
 d. Telephone number:  
 e. E-mail address:  
 f. Fax number:  
 g. Party represented:  
☐ Additional representation is described in Attachment 8.
9. **Preference**  
☐ This case is entitled to preference *(specify code section):*
10. **Alternative dispute resolution (ADR)**  
 a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.  
 (1) For parties represented by counsel: Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.  
 (2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.  
 b. **Referral to judicial arbitration or civil action mediation (if available).**  
 (1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.  
 (2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.  
 (3) ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. *(specify exemption):*



|  |              |
|--|--------------|
| PLAINTIFF/PETITIONER: ISAAC CURRY            | CASE NUMBER: |
| DEFENDANT/RESPONDENT: WELLS FARGO BANK, N.A. | YC066168     |

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

|                                     | The party or parties completing this form are <b>willing</b> to participate in the following ADR processes ( <i>check all that apply</i> ): | If the party or parties completing this form in the case <b>have agreed</b> to participate in or have already completed an ADR process or processes, indicate the status of the processes ( <i>attach a copy of the parties' ADR stipulation</i> ):   |
|-------------------------------------|---|---|
| (1) Mediation                       | <input checked="" type="checkbox"/>   | <input checked="" type="checkbox"/> Mediation session not yet scheduled<br><input type="checkbox"/> Mediation session scheduled for (date):<br><input type="checkbox"/> Agreed to complete mediation by (date):<br><input type="checkbox"/> Mediation completed on (date):                      |
| (2) Settlement conference           | <input type="checkbox"/>  | <input type="checkbox"/> Settlement conference not yet scheduled<br><input type="checkbox"/> Settlement conference scheduled for (date):<br><input type="checkbox"/> Agreed to complete settlement conference by (date):<br><input type="checkbox"/> Settlement conference completed on (date): |
| (3) Neutral evaluation              | <input type="checkbox"/>  | <input type="checkbox"/> Neutral evaluation not yet scheduled<br><input type="checkbox"/> Neutral evaluation scheduled for (date):<br><input type="checkbox"/> Agreed to complete neutral evaluation by (date):<br><input type="checkbox"/> Neutral evaluation completed on (date):             |
| (4) Nonbinding judicial arbitration | <input type="checkbox"/>  | <input type="checkbox"/> Judicial arbitration not yet scheduled<br><input type="checkbox"/> Judicial arbitration scheduled for (date):<br><input type="checkbox"/> Agreed to complete judicial arbitration by (date):<br><input type="checkbox"/> Judicial arbitration completed on (date):     |
| (5) Binding private arbitration     | <input type="checkbox"/>  | <input type="checkbox"/> Private arbitration not yet scheduled<br><input type="checkbox"/> Private arbitration scheduled for (date):<br><input type="checkbox"/> Agreed to complete private arbitration by (date):<br><input type="checkbox"/> Private arbitration completed on (date):         |
| (6) Other ( <i>specify</i> ):       | <input type="checkbox"/>  | <input type="checkbox"/> ADR session not yet scheduled<br><input type="checkbox"/> ADR session scheduled for (date):<br><input type="checkbox"/> Agreed to complete ADR session by (date):<br><input type="checkbox"/> ADR completed on (date):   |

CM-110

|  |              |
|--|--------------|
| PLAINTIFF/PETITIONER: ISAAC CURRY            | CASE NUMBER: |
| DEFENDANT/RESPONDENT: WELLS FARGO BANK, N.A. | YC066168     |

**11. Insurance**

- a. ☐ Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (*explain*):

**12. Jurisdiction**

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other (*specify*):

Status:

**13. Related cases, consolidation, and coordination**

- a. ☐ There are companion, underlying, or related cases.
- (1) Name of case:
- (2) Name of court:
- (3) Case number:
- (4) Status:
- ☐ Additional cases are described in Attachment 13a.
- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (*name party*):

**14. Bifurcation**

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

**15. Other motions**

- ☐ The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):

**16. Discovery**

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):
- | <u>Party</u> | <u>Description</u> | <u>Date</u> |
|--------------|--------------------|-------------|
| PLAINTIFF    | Written Discovery  | July 2012   |
- c. ☐ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

CM-110

|  |                          |
|--|--------------------------|
| PLAINTIFF/PETITIONER: ISAAC CURRY            | CASE NUMBER:<br>YC066168 |
| DEFENDANT/RESPONDENT: WELLS FARGO BANK, N.A. |                          |

**17. Economic litigation**

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

**18. Other issues**

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

**19. Meet and confer**

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): \_\_\_\_\_

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: May 17, 2012

Aparajit Bhowmik

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

**BLUMENTHAL, NORDREHAUG & BHOWMIK**

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Piya Mukherjee (State Bar #274217)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF LOS ANGELES**

ISAAC CURRY, individually,

Plaintiff,

vs.

WELLS FARGO BANK, N.A.; and  
DOES 1 through 50 inclusive,

Defendants.

CASE No. YC066168

**PROOF OF SERVICE**

Date filed: December 22, 2011

PROOF OF SERVICE

Case No.: YC066168

1 STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

2 I, Aparajit Bhowmik, am employed in the County of San Diego, State of California. I  
3 am over the age of 18 and not a party to the within action. My business address is 2255  
Calle Clara, La Jolla, California 92037.

4 On May 17, 2012, I served the document(s) described as:

5  
6 **1. CASE MANAGEMENT STATEMENT**

7  
8 XX (BY MAIL): I caused each such envelope, with postage thereon fully prepaid,  
9 to be placed in the United States mail at San Diego, California. I am readily  
10 familiar with this firm's business practice for collection and processing of  
correspondence for mailing with the U.S. Postal Service pursuant to which  
11 practice the correspondence will be deposited with the U.S. Postal Service this  
same day in the ordinary course of business (C.C.P. Section 10139a); 2015.5):

12 Lindbergh Porter  
LITTLER MENDELSON, P.C.  
650 California Street  
13 20<sup>th</sup> Floor  
San Francisco, CA 94108  
14 Attorneys for Defendant Wells Fargo Bank, N.A.

15  
16 X (State): I declare under penalty of perjury under the laws of the State of California  
that the above is true and correct.

17 Executed on May 17, 2012, at La Jolla, California.

18  
19  
20   
Aparajit Bhowmik

21  
22  
23 K:\D\Dropbox\Pending Litigation\Wells Fargo - Curry\p-pos-CMC-ST.wpd  
24  
25  
26  
27  
28

# **EXHIBIT F**

1 LINDBERGH PORTER, Bar No. 100091  
2 MARY D. WALSH, Bar No. 197039  
3 LITTLER MENDELSON, P.C.  
650 California Street  
20th Floor  
San Francisco, CA 94108.2693  
4 Telephone: 415.433.1940  
Fax No.: 415.399.8490

5 Attorneys for Defendant  
6 WELLS FARGO BANK, N.A.

7 NORMAN B. BLUMENTHAL, Bar No. 068687  
8 KYLE R. NORDREHAUG, Bar No. 205975  
9 APARAJIT BHOWMIK, Bar No. 248066  
BLUMENTHAL, NORDREHAUG & BHOMIK  
10 2255 Calle Clara  
La Jolla, CA 92037  
11 Telephone: 858-551-1223  
12 Fax: 858-551-1232

13 Attorneys for Plaintiff  
14 ISAAC CURRY

15  
16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 COUNTY OF LOS ANGELES

18 ISAAC CURRY, individually

19 Plaintiff,

20 v.

21 WELLS FARGO BANK, N.A.; and DOES  
1 through 50, inclusive,

22 Defendants.  
23  
24  
25  
26  
27  
28

**CONFORMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court

JUL 16 2012

John A. Clarke, Executive Officer/Clerk

By R. Gilliland, Deputy

Case No. YC066168

ASSIGNED FOR ALL PURPOSES TO  
JUDGE LAURA C. ELLISON

**STIPULATED PROTECTIVE ORDER**

Trial Date: None Set  
Complaint Filed: December 22, 2011

STIPULATED PROTECTIVE ORDER  
CASE NO. YC066168

1 Plaintiff Isaac Curry ("Plaintiff") and Defendant Wells Fargo Bank, National Association  
 2 ("Wells Fargo"), by and through their respective counsel of record, submit this Stipulated Protective  
 3 Order;

4 1. PURPOSES AND LIMITATIONS

5 Good cause for this protective order is shown in that disclosure and discovery activity in this  
 6 action are likely to involve production of confidential, proprietary, or private information for which  
 7 special protection from public disclosure and from use for any purpose other than prosecuting this  
 8 litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the court to  
 9 enter the following Stipulated Protective Order. The parties acknowledge that this Order does not  
 10 confer blanket protections on all disclosures or responses to discovery and that the protection it  
 11 affords extends only to the limited information or items that are entitled under the applicable legal  
 12 principles to treatment as confidential. The parties further acknowledge, as set forth in Section 10,  
 13 below, that this Stipulated Protective Order creates no entitlement to file confidential information  
 14 under seal; California Rules of Court, Rules 2.550 *et seq.* set forth the procedures that must be  
 15 followed and reflects the standards that will be applied when a party seeks permission from the  
 16 Court to file material under seal. Counsel shall narrowly tailor the documents, materials or papers  
 17 that come within this stipulation and order.

18 2. DEFINITIONS

19 2.1 Party: any party to this action, including all of its officers, directors, employees,  
 20 consultants, retained experts, and outside counsel (and their support staff).

21 2.2 Disclosure or Discovery Material: all items or information, regardless of the medium  
 22 or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or  
 23 tangible things) that are produced or generated in disclosures or responses to discovery in this  
 24 matter.

25 2.3 "Confidential" Information or Items: information (regardless of how generated,  
 26 stored or maintained) or tangible things that qualify for protection under standards developed under  
 27 Code of Civil Procedure section 2031.060.

28 2.

STIPULATED PROTECTIVE ORDER  
 CASE NO. YC066168



1 As applied to documents, materials or papers filed with the court, this stipulation and order  
 2 shall be used sparingly to cover only those items that are clearly trade secret, come within clearly  
 3 defined areas of privileges accepted in State and/or Federal Courts, or have a compelling need for  
 4 confidentiality.

5 2.4 "Attorneys' Eyes Only" Information or Items: extremely sensitive "Confidential  
 6 Information or Items" whose disclosure to another Party or nonparty would create a substantial risk  
 7 of serious injury that could not be avoided by less restrictive means.

8 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
 9 Producing Party.

10 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material  
 11 in this action.

12 2.7 Designating Party: a Party or non-party that designates information or items that it  
 13 produces in disclosures or in responses to discovery as "Confidential" or "Highly Confidential—  
 14 Attorneys' Eyes Only."

15 2.8 Protected Material: any Disclosure or Discovery Material that is designated as  
 16 "Confidential" or as "Highly Confidential—Attorneys' Eyes Only."

17 2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained to  
 18 represent or advise a Party in this action.

19 2.10 House Counsel: attorneys who are employees of a Party.

20 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their  
 21 support staff).

22 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to  
 23 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
 24 consultant in this action and who is not a past or a current employee of a Party or of a competitor of  
 25 a Party and who, at the time of retention, is not anticipated to become an employee of a Party or a  
 26 competitor of a Party. This definition includes a professional jury or trial consultant retained in  
 27 connection with this litigation.

1           2.13 Professional Vendors: persons or entities that provide litigation support services  
 2 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,  
 3 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

4           3. SCOPE

5           The protections conferred by this Stipulation and Order cover not only Protected Material (as  
 6 defined above), but also any information copied or extracted therefrom, as well as all copies,  
 7 excerpts, summaries, or compilations thereof; plus testimony, conversations, or presentations by  
 8 parties or counsel to or in court or in other settings that might reveal Protected Material.

9           4. DURATION

10           Even after the termination of this litigation, the confidentiality obligations imposed by this  
 11 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
 12 otherwise directs until compliance with paragraph 11 herein.

13           5. DESIGNATING PROTECTED MATERIAL

14           5.1 Designating Material for Protection. Both the Producing Party and Receiving Party  
 15 have a right to designate material as "Confidential" or "Attorneys' Eyes Only." If it comes to a  
 16 Party's or a non-party's attention that information or items that it designated for protection do not  
 17 qualify for protection at all, or do not qualify for the level of protection initially asserted, that Party  
 18 or non-party must promptly notify all other parties that it is withdrawing the mistaken designation.

19           5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
 20 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material  
 21 that qualifies for protection under this Order must be clearly so designated before the material is  
 22 disclosed or produced, or in the case of the Receiving Party, within 30 days of receipt of the  
 23 material. However, either Party may designate any material produced before entry of this Order by  
 24 the Court if that Party notifies the other Parties of this designation within 30 days of the date this  
 25 Order is filed by the Court.

26           Designation in conformity with this Order requires:

27           (a) for information in documentary form (apart from information provided in  
 28 electronic format or on CD or DVD [see section (b) below], and not including transcripts of

1 depositions or other pretrial or trial proceedings [see section (c) below]), that the Producing Party  
 2 (or Receiving Party where applicable) affix the legend "CONFIDENTIAL" or "ATTORNEYS'  
 3 EYES ONLY" on each page that contains protected material. A Party or non-party that makes  
 4 original documents or materials available for inspection need not designate them for protection until  
 5 after the inspecting Party has indicated which material it would like copied and produced. During  
 6 the inspection and before the designation, all of the material made available for inspection shall be  
 7 deemed "ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it  
 8 wants copied and produced, the Producing Party must determine which documents, or portions  
 9 thereof, qualify for protection under this Order, then, before producing the specified documents, the  
 10 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "ATTORNEYS' EYES  
 11 ONLY") on each page that contains Protected Material.

12 (b) for writings provided in native format or produced on CD, DVD, or other storage  
 13 device because of the volume of material, the Producing Party (or Receiving Party where  
 14 applicable) affix the legend "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" on the storage  
 15 medium (e.g., CD) that contains protected material but not upon each image on that storage medium.

16 (c) for testimony given in deposition or in other pretrial or trial proceedings, that the  
 17 Party or non-party offering or sponsoring the testimony identify on the record, before the close of the  
 18 deposition, hearing, or other proceeding, all protected testimony, and further specify any portions of  
 19 the testimony that qualify as "ATTORNEYS' EYES ONLY." When it is impractical to identify  
 20 separately each portion of testimony that is entitled to protection, and when it appears that  
 21 substantial portions of the testimony may qualify for protection, the Party or non-party that sponsors,  
 22 offers, or gives the testimony may invoke on the record (before the deposition or proceeding is  
 23 concluded) a right to have up to 30 calendar days after receipt of the relevant transcript to identify  
 24 the specific portions of the testimony as to which protection is sought and to specify the level of  
 25 protection being asserted ("CONFIDENTIAL" or "ATTORNEYS' EYES ONLY"). Only those  
 26 portions of the testimony that are appropriately designated for protection within the 30 calendar days  
 27 shall be covered by the provisions of this Stipulated Protective Order.

1 Transcript pages containing Protected Material must be separately bound by the court  
 2 reporter, who must affix to each such page the legend "CONFIDENTIAL" or "ATTORNEYS'  
 3 EYES ONLY," as instructed by the Party or nonparty offering or sponsoring the witness or  
 4 presenting the testimony.

5 (d) for information produced in some other form, and for any other tangible items, that  
 6 the Producing Party affix in a prominent place on the exterior of the container or containers in which  
 7 the information or item is stored the legend "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY."

8 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
 9 designate qualified information or items as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY"  
 10 does not, standing alone, waive the Designating Party's right to secure protection under this Order  
 11 for such material. If material is appropriately designated as "CONFIDENTIAL" or "ATTORNEYS'  
 12 EYES ONLY" after the material was initially produced, the Receiving Party (or the Producing Party  
 13 as the case may be) on timely notification of the designation, must make reasonable efforts to assure  
 14 that the material is treated in accordance with the provisions of this Order.

## 15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's  
 17 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
 18 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive  
 19 its right to challenge a confidentiality designation by electing not to mount a challenge promptly  
 20 after the original designation is disclosed.

21 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's  
 22 confidentiality designation must do so in good faith and must begin the process by conferring  
 23 directly (in voice to voice telephonic or in-person dialogue; other forms of communication are not  
 24 sufficient) with counsel for the Designating Party. In conferring, the challenging Party must explain  
 25 the basis for its belief that the confidentiality designation was not proper and must give the  
 26 Designating Party an opportunity to review the designated material, to reconsider the circumstances,  
 27 and, if no change in designation is offered, to explain the basis for the chosen designation. A  
 28

1 challenging Party may proceed to the next stage of the challenge process only if it has engaged in  
2 this meet and confer process first.

3       6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality  
4 designation after considering the justification offered by the Designating Party may file and serve a  
5 motion using whatever procedural mechanisms are available and appropriate (in compliance with  
6 California Rules of Court, Rules 2.550 *et seq.*, if applicable) that identifies the challenged material  
7 and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a  
8 competent declaration that affirms that the movant has complied with the meet and confer  
9 requirements imposed in the preceding paragraph and that sets forth with specificity the justification  
10 for the confidentiality designation that was given by the Designating Party in the meet and confer  
11 dialogue.

12       The burden of persuasion in any such challenge proceeding shall be on the Designating  
13 Party. Until the court rules on the challenge, all parties shall continue to afford the material in  
14 question the level of protection to which it is entitled under the Producing Party's designation.

15       7. ACCESS TO AND USE OF PROTECTED MATERIAL

16       7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
17 produced by another Party or by a non-party in connection with this case only for prosecuting,  
18 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
19 the categories of persons and under the conditions described in this Order. When the litigation has  
20 been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL  
21 DISPOSITION).

22       Protected Material must be stored and maintained by a Receiving Party at a location and in a  
23 secure manner that ensures that access is limited to the persons authorized under this Order.

24       7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered  
25 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
26 information or item designated CONFIDENTIAL only to:

27       (a) the Receiving Party's Outside Counsel of record in this action, as well as employees  
28 of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and

7.

1 who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit  
2 A;

3 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
4 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
5 "Agreement to Be Bound by Protective Order" (Exhibit A);

6 (c) experts (as defined in this Order) of the Receiving Party to whom disclosure is  
7 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by  
8 Protective Order" (Exhibit A);

9 (d) the Court and its personnel;

10 (e) court reporters, their staffs, and professional vendors to whom disclosure is  
11 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by  
12 Protective Order" (Exhibit A);

13 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
14 necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A).  
15 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material  
16 must be separately bound by the court reporter and may not be disclosed to anyone except as  
17 permitted under this Stipulated Protective Order.

18 (g) the author of the document or the original source of the information.

19 7.3 Disclosure of "ATTORNEYS' EYES ONLY" Information or Items. Unless  
20 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
21 may disclose any information or item designated "ATTORNEYS' EYES ONLY" only to:

22 (a) the Receiving Party's Outside Counsel of record in this action, as well as employees  
23 of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and  
24 who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit  
25 A;

26 (b) House Counsel of a Receiving Party to whom disclosure is reasonably necessary for  
27 this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);  
28

## 8.

STIPULATED PROTECTIVE ORDER  
CASE NO. YC066168

(c) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation; and (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

(f) the author of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY," the Receiving Party must so notify the Designating Party, in writing (by fax or electronic mail, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burden and the expense of seeking protection in that court of its confidential material—and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.



9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

## 10. FILING PROTECTED MATERIAL

Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with California Rules of Court, Rules 2.550 *et seq.*

## 11. FINAL DISPOSITION

Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after the final termination of this action, each Receiving Party must return all Protected Material to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the Protected Material. With permission in writing from the Designating Party, the Receiving Party may destroy some or all of the Protected Material instead of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such



1 materials contain Protected Material. Any such archival copies that contain or constitute Protected  
 2 Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

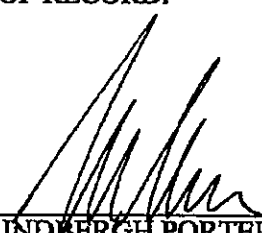
3 12. MISCELLANEOUS

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek  
 5 its modification by the Court in the future.


6 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order  
 7 no Party waives any right it otherwise would have to object to disclosing or producing any  
 8 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
 9 Party waives any right to object on any ground to use in evidence of any of the material covered by  
 10 this Protective Order.

11  
 12 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

13  
 14 Dated: June 27, 2012

  
 16 LINDBERGH PORTER, JR.  
 17 MARY D. WALSH  
 18 LITTLER MENDELSON  
 19 A Professional Corporation  
 20 Attorneys for Defendant  
 21 WELLS FARGO BANK, N.A.

22  
 23 Dated: June 26, 2012

  
 22 NORMAN B. BLUMENTHAL  
 23 BLUMENTHAL, NORDREHAUG &  
 24 BHOWMIK  
 25 Attorneys for Plaintiff  
 26 ISAAC CURRY

ORDER OF THE COURT

Upon review of the Parties' Stipulated Protective Order and upon a finding of good cause, it is hereby ordered that the foregoing Stipulated Protective Order is approved and the Parties are ordered to act in compliance therewith.

DATED: JUL 16 2012

Judge Laura C. Ellison

HON. LAURA C. ELLISON  
JUDGE OF THE SUPERIOR COURT

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
 4 [print or type full address], declare under penalty of perjury that I have read in its entirety and  
 5 understand the Stipulated Protective Order that was issued by the Superior Court of California on  
 6 \_\_\_\_\_ in the case of *Curry v. Wells Fargo, N.A.*, Case No. YC0566168. I  
 7 agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I  
 8 understand and acknowledge that failure to so comply could expose me to sanctions and punishment  
 9 in the nature of contempt. I solemnly promise that I will not disclose in any manner any information  
 10 or item that is subject to this Stipulated Protective Order to any person or entity except in strict  
 11 compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the Superior Court of California for the purpose  
 13 of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings  
 14 occur after termination of this action.

15 I hereby appoint \_\_\_\_\_ [print or type full name] of  
 16 \_\_\_\_\_ [print or type full address and  
 17 telephone number] as my California agent for service of process in connection with this action or  
 18 any proceedings related to enforcement of this Stipulated Protective Order.

19  
 20 Date: \_\_\_\_\_

21 City and State where sworn and signed: \_\_\_\_\_

22 Printed name: \_\_\_\_\_  
 23 [printed name]

24 Signature: \_\_\_\_\_  
 25 [signature]

26 Firmwide:110540292.1 051995.1048

**PROOF OF SERVICE BY MAIL**

I am employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 650 California Street, 20th Floor, San Francisco, California 94108.2693. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On June 28, 2012, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

**STIPULATED PROTECTIVE ORDER**

in a sealed envelope, postage fully paid, addressed as follows:

Norman Blumenthal, Esq.  
Kyle R. Nordrehaug, Esq.  
Aparajit Bhowmik, Esq.  
Blumenthal, Nordrehaug & Bhowmik  
2255 Calle Clara  
La Jolla, CA 92037

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 28, 2012, at San Francisco, California.

  
Cynthia K. Montague

# **EXHIBIT G**

**CONFORMED COPY**

OF ORIGINAL FILED

Los Angeles Superior Court

**JUL 16 2012**

John A. Clarke, Executive Officer/Clerk

By R. Gilliland, Deputy

**COPY**

**BLUMENTHAL, NORDREHAUG & BHOWMIK**

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Piya Mukherjee (State Bar #274217)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF LOS ANGELES**

ISAAC CURRY, individually,

Plaintiff,

vs.

WELLS FARGO BANK, N.A.; and DOES 1  
through 50 inclusive,

Defendants.

CASE No. YC066168

**STIPULATION AND ~~PROPOSED~~  
ORDER FOR LEAVE FOR PLAINTIFF  
TO FILE A FIRST AMENDED  
COMPLAINT**

Judge: Hon. Laura C. Ellison  
Dept.: "A"

Date filed: December 22, 2011

1 WHEREAS, Plaintiff seeks to file a First Amended Complaint, a copy of which is attached  
2 hereto as Exhibit #1;

3 WHEREAS, Defendant does not oppose the filing of this proposed First Amended  
4 Complaint;

5 WHEREAS, Defendant is not agreeing that there is any merit to the allegations set forth in  
6 the First Amended Complaint, but rather is only agreeing that the First Amended Complaint may  
7 be filed by Plaintiff;

8 NOW, THEREFORE, the parties hereby stipulate and agree as follows:

9 Plaintiff and Defendant, through their respective counsel of record, stipulate to Plaintiff's  
10 filing the First Amended Complaint, attached hereto as Exhibit #1, as the operative Complaint, to  
11 which Defendant shall have thirty (30) days to file a responsive pleading after the Court enters an  
12 order allowing the filing of the First Amended Complaint pursuant to this stipulation.

13  
14 Dated: June 27, 2012

BLUMENTHAL, NORDREHAUG & BHOWMIK

15  
16 By: [Signature]

Aparajit Bhowmik  
Attorneys for Plaintiff

17  
18 Dated: June 27, 2012

LITTLER MENDELSON, P.C.

19  
20 By: [Signature]

Mary D. Walsh  
Attorneys for Defendant

21  
22 IT IS SO ORDERED.

23 JUL 16 2012

Judge Laura C. Ellison

24 Dated: \_\_\_\_\_, 2012

25 By: \_\_\_\_\_

Honorable Laura C. Ellison  
Judge of the Los Angeles County Superior Court

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# **EXHIBIT #1**



**BLUMENTHAL, NORDREHAUG & BHOWMIK**

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**CONFORMED COPY**

OF ORIGINAL FILED

Los Angeles Superior Court

JUL 16 2012

John A. Clarke, Executive Officer/Clerk

By R. Gilliland, Deputy

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF LOS ANGELES**

ISAAC CURRY, individually,

Plaintiff,

vs.

WELLS FARGO BANK, N.A.; and  
DOES 1 through 50 inclusive,

Defendants.

CASE No. YC066168

**FIRST AMENDED COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE § 17200 *et seq.*;
2. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF CAL. LAB. CODE §§ 510, 551, 552, 1194 AND 1198, *et seq.*;
3. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
4. RETALIATION IN VIOLATION OF FEHA (Cal. Govt. Code § 12940);
5. WRONGFUL TERMINATION; and,
6. VIOLATION OF FLSA, 29 USC 201, *et seq.*

**DEMAND FOR A JURY TRIAL**

1 Plaintiff Isaac Curry ("PLAINTIFF"), an individual, alleges on information and belief,  
2 except for his own acts and knowledge, the following:

3  
4 **THE PARTIES**

5 1. Defendant Wells Fargo Bank, N.A. is a diversified financial services company  
6 providing banking, insurance, investments, mortgage, and consumer and commercial finance  
7 through more than 10,000 stores and 12,000 ATMs and the Internet across North America and  
8 internationally. Wells Fargo Bank, N.A. hereinafter also referred to as "WELLS FARGO" or  
9 "DEFENDANT" employs more than 270,000 team members worldwide and has assets of \$1.2  
10 trillion as of 2010.

11 2. According to DEFENDANT's website, the company is headquartered in San  
12 Francisco, California, and maintains the largest number of its banking, mortgage, and brokerage  
13 stores in California. DEFENDANT is the industry's number one home mortgage lender and  
14 ranks first in the number of mortgage stores (2,400) operated nationwide.

15 3. An employer's obligation to pay its employees wages is more than a matter of  
16 private concern between the parties. That obligation is founded on a compelling public policy  
17 judgment that employees are entitled to work a livable number of hours at a livable wage. In  
18 addition, statutes and regulations that compel employers to pay overtime relate to fundamental  
19 issues of social welfare worthy of protection. The requirement to pay overtime wages extends  
20 beyond the benefits individual workers receive because overtime wages discourage employers  
21 from concentrating work in a few overburdened hands and encourage employers to instead hire  
22 additional employees. Especially in today's economic climate, the importance of spreading  
23 available work to reduce unemployment cannot be overestimated.

24 4. As part of their business, WELLS FARGO employs a fleet of so called "Home  
25 Mortgage Consultants." PLAINTIFF, as a Home Mortgage Consultant, was and is primarily  
26 engaged in the core, day-to-day business activities of WELLS FARGO. The Home Mortgage  
27 Consultants sell mortgage loan products. As a Home Mortgage Consultant, PLAINTIFF, in  
28 performing his sales duties, spends virtually all of his time working in a Wells Fargo office.

1 The primary tools PLAINTIFF employs in performing his sales function are the telephone and  
2 the computer. PLAINTIFF, since the inception of his employment with DEFENDANT, also  
3 spends much of his time and energy engaged in the clerical tasks associated with loan  
4 processing.

5 5. As a result, the PLAINTIFF is and has been engaged in a type of work that  
6 requires no exercise of independent judgment or discretion as to any matter of significance.  
7 Therefore, the PLAINTIFF did not have duties or authority with regards to the management or  
8 general business operations of DEFENDANT or DEFENDANT's clients and should therefore  
9 have been properly classified as a non-exempt employee.

10 6. Plaintiff Isaac Curry ("PLAINTIFF") has been employed by WELLS FARGO in  
11 Culver City, California as a Home Mortgage Consultant from March of 2010 to May 22, 2012.

12 7. The position of Home Mortgage Consultant was represented by WELLS FARGO  
13 to the PLAINTIFF as an exempt and salaried position. On or around May 26, 2011,  
14 PLAINTIFF was reclassified as a non-exempt and hourly employee of DEFENDANT. Over  
15 the entire course of PLAINTIFF's employment with DEFENDANT, he has performed the same  
16 job duties. From the period of March of 2010 until on or around May 26, 2011 (the  
17 "RELEVANT TIME PERIOD"), PLAINTIFF was classified as an exempt and salaried  
18 employee.

19 8. As defined by DEFENDANT's comprehensive corporate policies and  
20 procedures, the duties that the PLAINTIFF primarily engaged in includes selling mortgage loan  
21 products. In addition, the PLAINTIFF is and was also engaged in clerical tasks and paperwork  
22 associated with loan processing in accordance with DEFENDANT's established specific  
23 procedures and protocols which govern and control every aspect of the work performed by the  
24 PLAINTIFF as a Home Mortgage Consultant. These standardized procedures mirror the  
25 realities of the workplace evidencing a uniformity of work among the Home Mortgage  
26 Consultants and negate any exercise of independent judgment and discretion as to any matter  
27 of significance.

28

1           9.     The work schedule for PLAINTIFF was set by DEFENDANT. Generally,  
2 during the RELEVANT TIME PERIOD while the PLAINTIFF was classified as an exempt  
3 employee, he worked approximately ten (10) hours each workday and approximately ten (10)  
4 hours of overtime each workweek.

5           10.    During the RELEVANT TIME PERIOD, DEFENDANT had not established an  
6 alternative workweek election for the PLAINTIFF for ten (10) to twelve (12) hour workdays.

7           11.    During the RELEVANT TIME PERIOD, PLAINTIFF was not provided with  
8 overtime compensation and other benefits for the overtime hours worked as required by law due  
9 to DEFENDANT's unsubstantiated classification of PLAINTIFF as "exempt" by  
10 DEFENDANT.

11           12.    As a matter of company policy, practice, and procedure, DEFENDANT had  
12 unlawfully, unfairly and/or deceptively classified PLAINTIFF as exempt, until on or around  
13 May 26, 2011, based on job title alone, failed to pay the required overtime compensation and  
14 otherwise failed to comply with all applicable labor laws with respect to PLAINTIFF.

15           13.    The true names and capacities, whether individual, corporate, subsidiary,  
16 partnership, associate or otherwise of Defendants DOES 1 through 50, inclusive, are presently  
17 unknown to the PLAINTIFF who therefore sues these Defendants by such fictitious names  
18 pursuant to Cal. Civ. Proc. Code § 474. The PLAINTIFF will seek leave to amend this  
19 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they  
20 are ascertained. PLAINTIFF is informed and believes, and based upon that information and  
21 belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50,  
22 inclusive, are responsible in some manner for one or more of the events and happenings that  
23 proximately caused the injuries and damages hereinafter alleged.

24           14.    The agents, servants and/or employees of the Defendants and each of them  
25 acting on behalf of the Defendants acted within the course and scope of his, her or its authority  
26 as the agent, servant and/or employee of the Defendants, and personally participated in the  
27 conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein.  
28 Consequently, the acts of each Defendants are legally attributable to the other Defendants and

1 all Defendants are jointly and severally liable to the PLAINTIFF for the loss sustained as a  
2 proximate result of the conduct of the Defendants' agents, servants and/or employees.

### 3 4 THE CONDUCT

5 15. The primary duty required of the PLAINTIFF as a Home Mortgage Consultant  
6 as defined by DEFENDANT was executed by the PLAINTIFF through the performance of non-  
7 exempt labor within a defined skill set.

8 16. Although the PLAINTIFF primarily performed non-exempt labor, DEFENDANT  
9 instituted a blanket classification policy, practice and procedure by which the PLAINTIFF was  
10 classified as exempt from overtime compensation. By reason of this uniform exemption  
11 practice, policy and procedure applicable to the PLAINTIFF, during the RELEVANT TIME  
12 PERIOD, DEFENDANT committed acts of unfair competition in violation of the California  
13 Unfair Competition law, Cal. Bus. & Prof. Code § 17200 (the "UCL"), by engaging in a  
14 company-wide policy, practice and procedure which failed to properly classify the PLAINTIFF  
15 and thereby failed to pay him overtime wages for documented overtime hours worked and  
16 provide him with all legally required meal and rest breaks. The proper classification of the  
17 PLAINTIFF is DEFENDANT's burden. As a result of DEFENDANT's intentional disregard  
18 of the obligation to meet this burden, DEFENDANT failed to pay all required overtime  
19 compensation for work performed by the PLAINTIFF and violated the California Labor Code  
20 and regulations promulgated thereunder as herein alleged over the RELEVANT TIME  
21 PERIOD. In addition, DEFENDANT failed to provide all of the legally required meal and rest  
22 breaks to the PLAINTIFF as required by the applicable Wage Order and Labor Code. On or  
23 around May 26, 2011, DEFENDANT reclassified PLAINTIFF as a non-exempt and hourly  
24 employee and began properly paying him for overtime wages and providing him all legally  
25 required meal and rest breaks.

26 17. DEFENDANT, as a matter of law, has the burden of proving that (a) employees  
27 are properly classified as exempt and that (b) DEFENDANT otherwise complies with  
28 applicable laws. Other than the initial classification of the PLAINTIFF as exempt from being

1 paid overtime based on job title alone, DEFENDANT had no business policy, practice, or  
2 procedure to ensure that the PLAINTIFF was properly classified as exempt, and in fact, as a  
3 matter of corporate policy erroneously and unilaterally classified the PLAINTIFF as exempt  
4 based on job title alone.

5 18. Over the course of his employment with DEFENDANT, including currently, the  
6 PLAINTIFF has primarily performed non-exempt job duties, but during the RELEVANT TIME  
7 PERIOD was nevertheless classified by DEFENDANT as exempt from overtime pay and  
8 worked more than eight (8) hours a day, forty (40) hours a week, and/or on the seventh (7th)  
9 consecutive day of a workweek.

10 19. During the RELEVANT TIME PERIOD, PLAINTIFF was not primarily engaged  
11 in work of a type that was directly related to the management or general business operations of  
12 the employer's customers, when giving these words a fair but narrow construction.  
13 PLAINTIFF was also not primarily engaged in work of a type that was performed at the level  
14 of the policy or management of DEFENDANT. PLAINTIFF was also not primarily engaged  
15 in work requiring knowledge of an advanced type in a field or science or learning customarily  
16 acquired by a prolonged course of specialized intellectual instruction and study, but rather his  
17 work primarily involved the performance of routine clerical activities. The work of a Home  
18 Mortgage Consultant of DEFENDANT is work wherein the PLAINTIFF was and is primarily  
19 engaged in the day-to-day business of WELLS FARGO. The Home Mortgage Consultants sell  
20 mortgage loan products. In addition, the PLAINTIFF was also engaged in clerical tasks, and  
21 paperwork associated with loan processing.

22 20. The fact that the work of the PLAINTIFF may have involved work using a  
23 specialized skill set or technical abilities in a defined technical area does not mean that the  
24 PLAINTIFF is exempt from overtime wages. Indeed, the exercise of discretion and  
25 independent judgment must be more than the use of a highly technical skill set described in a  
26 manual or other sources. The work that the PLAINTIFF was primarily engaged in is the work  
27 that is required to be performed as part of the day-to-day-business activity of DEFENDANT.  
28 As a result, the PLAINTIFF was primarily engaged in work that falls on the production or the



1 non-exempt administrative sale side of the administrative/production worker dichotomy and  
2 should have been properly classified as a non-exempt employee.

3 21. PLAINTIFF was classified as exempt from California overtime and related laws  
4 by DEFENDANT during the RELEVANT TIME PERIOD, however, he did not have  
5 managerial duties or authority. Furthermore, the PLAINTIFF, as a Home Mortgage Consultant,  
6 was, and currently continues to be, tightly controlled by company policy and by his supervisors,  
7 did not exercise discretion or independent judgment as to matters of significance, and his job  
8 duties were not directly related to DEFENDANT's management policies or general business  
9 operation.

10 22. During the RELEVANT TIME PERIOD, PLAINTIFF was classified and treated  
11 by DEFENDANT as exempt. During that time, DEFENDANT failed to take the proper steps  
12 to determine whether the PLAINTIFF was properly classified under the applicable Industrial  
13 Welfare Commission Wage Order (Wage Order 4-2001) and Cal. Lab. Code §§ 510, *et seq.* as  
14 exempt from applicable California labor laws. Since DEFENDANT had, prior to May 26,  
15 2011, affirmatively and wilfully misclassified the PLAINTIFF in compliance with California  
16 labor laws, DEFENDANT's practices violated California law. In addition, DEFENDANT  
17 acted deceptively by falsely and fraudulently telling the PLAINTIFF that he was exempt from  
18 overtime pay when DEFENDANT knew or should have known that this statement was false and  
19 not based on known facts. DEFENDANT also acted unfairly by violating the California labor  
20 laws, and as a result of this policy and practice, DEFENDANT also violated the UCL. In doing  
21 so, DEFENDANT cheated the competition by paying the PLAINTIFF less than the amount  
22 competitors paid who complied with the law and cheated the PLAINTIFF by not paying him  
23 in accordance with California law. In addition, DEFENDANT failed to provide all of the  
24 legally required meal and rest breaks to the PLAINTIFF as required by the applicable Wage  
25 Order and Labor Code. During the RELEVANT TIME PERIOD, DEFENDANT did not have  
26 a policy or practice which provided meal and rest breaks to the PLAINTIFF. As a result,  
27 DEFENDANT's failure to provide the PLAINTIFF with all legally required meal and rest  
28 breaks is evidenced by DEFENDANT's business records which contain no record of these

1 breaks.

2 23. DEFENDANT, during the RELEVANT TIME PERIOD, also failed to provide  
3 the PLAINTIFF with a wage statement in writing that accurately sets forth gross wages earned,  
4 all applicable hourly rates in effect during the pay period and the corresponding number of  
5 hours worked at each hourly rate by the PLAINTIFF. This conduct violated California Labor  
6 Code § 226. The pay stubs also did not accurately display anywhere the PLAINTIFF's  
7 overtime hours and applicable rates of overtime pay for the pay period.

8 24. By reason of this conduct applicable to the PLAINTIFF, during the RELEVANT  
9 TIME PERIOD, DEFENDANT committed acts of unfair competition in violation of the  
10 California Unfair Competition law, Cal. Bus. & Prof. Code § 17200 (the "UCL"), by engaging  
11 in a company-wide policy and procedure which failed to correctly classify the PLAINTIFF as  
12 non-exempt. The proper classification of PLAINTIFF is DEFENDANT's burden. As a result  
13 of DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT  
14 failed to properly calculate and/or pay all required overtime compensation for work performed  
15 by the PLAINTIFF and violated the applicable Wage Order, the California Labor Code and the  
16 regulations promulgated thereunder as herein alleged during the RELEVANT TIME PERIOD.

17  
18 **JURISDICTION AND VENUE**

19 25. This Court has jurisdiction over this action pursuant to Cal. Code of Civ. Proc.  
20 § 410.10, Cal. Business & Professions Code §17203, and the California Family Care and  
21 Medical Leave Act, California Government Code § 12945.2 et seq..

22 26. Venue is proper in this County pursuant to Cal. Code of Civ. Proc. §§ 395 and  
23 395.5, because PLAINTIFF resides in this County and WELLSFARGO (i) currently maintains  
24 and at all relevant times maintained offices and facilities in this County and/or conducts  
25 substantial business in this County, and (ii) committed the wrongful conduct herein alleged in  
26 this County against PLAINTIFF.

27 27. PLAINTIFF received a right to sue from DFEH at the time of the filing of his  
28 charge of retaliation on June 13, 2012.



**FIRST CAUSE OF ACTION**

**For Unlawful Business Practices**

**[Cal. Bus. And Prof. Code § 17200 *et seq.*]**

**(By PLAINTIFF Against All Defendants)**

28. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, paragraphs 1 through 27 of this Complaint.

29. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof. Code § 17021.

30. California Business & Professions Code § 17200 *et seq.* (the "UCL") defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

California Business & Professions Code § 17203.

31. By the conduct alleged herein, during the RELEVANT TIME PERIOD, DEFENDANT had engaged in a business practice which violated California law, including but not limited to, Wage Order 4-2001, the California Code of Regulations, and the California Labor Code Sections 226(a), 226.7, 510, 1194 & 1198, and for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

32. By the conduct alleged herein, DEFENDANT's practices during the RELEVANT TIME PERIOD were unlawful and unfair in that these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or substantially injurious to employees, and were without valid justification or utility for which this Court should issue

1 equitable and injunctive relief pursuant to Section 17203 of the California Business &  
2 Professions Code, including restitution of wages wrongfully withheld.

3 33. By the conduct alleged herein, DEFENDANT's practices during the  
4 RELEVANT TIME PERIOD were deceptive and fraudulent in that DEFENDANT's uniform  
5 policy and practice was to represent to PLAINTIFF that he was exempt from overtime pay  
6 when in fact these representations were false and likely to deceive, for which this Court should  
7 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including  
8 restitution of wages wrongfully withheld.

9 34. By the conduct alleged herein, DEFENDANT's practices during the  
10 RELEVANT TIME PERIOD were also unlawful, unfair and deceptive in that DEFENDANT's  
11 employment practices caused the PLAINTIFF to be underpaid during his employment with  
12 DEFENDANT.

13 35. By and through the unlawful and unfair business practices described herein,  
14 during the RELEVANT TIME PERIOD, DEFENDANT had obtained valuable property, money  
15 and services from the PLAINTIFF and had deprived PLAINTIFF of valuable rights and benefits  
16 guaranteed by law and contract, all to the detriment of PLAINTIFF and to the benefit of  
17 DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors who  
18 comply with the law.

19 36. All the acts described herein as violations of, among other things, the California  
20 Labor Code, California Code of Regulations, the Industrial Welfare Commission Wage Orders,  
21 and the related opinions of the Department of Labor, were unlawful, were in violation of public  
22 policy, were immoral, unethical, oppressive, and unscrupulous, and were likely to deceive the  
23 PLAINTIFF, as herein alleged, and thereby constitute deceptive, unfair and unlawful business  
24 practices in violation of Cal. Bus. and Prof. Code § 17200 *et seq.*

25 37. PLAINTIFF is entitled to, and does, seek such relief as may be necessary to  
26 restore to PLAINTIFF the money and property which DEFENDANT has acquired, or of which  
27 the PLAINTIFF has been deprived, by means of the above described unlawful and unfair  
28 business practices, including earned but unpaid wages for all hours worked.

5           39.       Therefore, the PLAINTIFF demands on behalf of himself, one (1) hour of pay for  
6 each workday in which a meal period was not timely provided for each five (5) hours of work,  
7 and/or one (1) hour of pay for each workday in which a second meal period was not timely  
8 provided for each ten (10) hours of work.

9           40.     PLAINTIFF further demands on behalf of himself, one (1) hour of pay for each  
10    workday in which a rest period was not timely provided as required by law.

41. PLAINTIFF is further entitled to, and does, seek a declaration that the described business practices are unlawful, unfair and deceptive.

42. As a result of the unlawful and unfair business practices described herein during the RELEVANT TIME PERIOD, the PLAINTIFF has suffered irreparable legal and economic harm as a result of DEFENDANT's unlawful and unfair business practices.

### For Failure To Pay Overtime Compensation

**[Cal. Lab. Code §§ 510, 551, 552, 1194 and 1198]**

(By PLAINTIFF Against All Defendants)

21 43. PLAINTIFF realleges and incorporates by this reference, as though fully set forth  
22 herein, paragraphs 1 through 42 of this Complaint.

23 44. Cal. Lab. Code § 510 states in relevant part:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate

1 of pay of an employee.

2 45. Cal. Lab. Code § 551 states that, "Every person employed in any occupation of  
3 labor is entitled to one day's rest therefrom in seven."

4 46. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his  
5 employees to work more than six days in seven."

6 47. Cal. Lab. Code § 515(d) provides: "For the purpose of computing the overtime  
7 rate of compensation required to be paid to a nonexempt full-time salaried employee, the  
8 employee's regular hourly rate shall be 1/40th of the employee's weekly salary."

9 48. Cal. Lab. Code § 1194 states:

10 Notwithstanding any agreement to work for a lesser wage, any employee  
11 receiving less than the legal minimum wage or the legal overtime compensation  
12 applicable to the employee is entitled to recover in a civil action the unpaid  
balance of the full amount of this minimum wage or overtime compensation,  
including interest thereon, reasonable attorney's fees, and costs of suit.

13 49. Cal. Lab. Code § 1198 provides: "The maximum hours of work and the  
14 standard conditions of labor fixed by the commission shall be the maximum hours of work and  
15 the standard conditions of labor for employees. The employment of any employee for longer  
16 hours than those fixed by the order or under conditions of labor prohibited by the order is  
17 unlawful."

18 50. During the RELEVANT TIME PERIOD, DEFENDANT had intentionally and  
19 uniformly designated certain employees as "exempt" employees, by their job title and without  
20 regard to DEFENDANT's realistic expectations and actual overall requirements of the job,  
21 including the PLAINTIFF who worked on the production side of DEFENDANT's business.  
22 This was done in an illegal attempt to avoid payment of overtime wages and other benefits in  
23 violation of the California Labor Code and Industrial Welfare Commission requirements.

24 51. For an employee to be exempt as a bona fide "executive," all the following  
25 criteria must be met and DEFENDANT has the burden of proving that:

26 (a) The employee's primary duty must be management of the enterprise, or of a  
27 customarily recognized department or subdivision; and,  
28

- (b) The employee must customarily and regularly direct the work of at least two (2) or more other employees; and,
- (c) The employee must have the authority to hire and fire, or to command particularly serious attention to his or her recommendations on such actions affecting other employees; and,
- (d) The employee must customarily and regularly exercise discretion and independent judgment; and,
- (e) The employee must be primarily engaged in duties which meet the test of exemption.

PLAINTIFF was not an executive because PLAINTIFF failed and continues to fail to meet the requirements of being an "executive" within the meaning of the applicable Wage Order.

52. For an employee to be exempt as a bona fide "administrator," all of the following criteria must be met and DEFENDANT has the burden of proving that:

- (a) The employee must perform office or non-manual work directly related to management policies or general business operation of the employer; and,
- (b) The employee must customarily and regularly exercise discretion and independent judgment; and,
- (c) The employee must regularly and directly assist a proprietor or an exempt administrator; or,
- (d) The employee must perform, under only general supervision, work requiring special training, experience, or knowledge, or,
- (e) The employee must execute special assignments and tasks under only general supervision; and,
- (f) The employee must be primarily engaged in duties which meet the test of exemption.

PLAINTIFF was not an administrator because PLAINTIFF failed to meet the requirements for being an "administrator" under the applicable Wage Order.

1           53. The Industrial Welfare Commission, in Wage Order 4-2001, at section  
2 (1)(A)(3), and Labor Code § 515 also set forth the requirements which must be complied with  
3 to place an employee in the "professional" exempt category. For an employee to be exempt as  
4 a bona fide "professional," all the following criteria must be met and DEFENDANT has the  
5 burden of proving that:

6           (a) The employee is primarily engaged in an occupation commonly recognized as a  
7 learned or artistic profession. For the purposes of this subsection, "learned or  
8 artistic profession" means an employee who is primarily engaged in the  
9 performance of:

10           1) Work requiring knowledge of an advanced type in a field or science or  
11 learning customarily acquired by a prolonged course of specialized  
12 intellectual instruction and study, as distinguished from a general  
13 academic education and from an apprenticeship, and from training in the  
14 performance of routine mental, manual, or physical processes, or work  
15 that is an essential part or necessarily incident to any of the above work;  
16 or,

17           2) Work that is original and creative in character in a recognized field of  
18 artistic endeavor, and the result of which depends primarily on the  
19 invention, imagination or talent of the employee or work that is an  
20 essential part of or incident to any of the above work; and,

21           3) Whose work is predominately intellectual and varied in character (as  
22 opposed to routine mental, manual, mechanical, or physical work) and is  
23 of such character cannot be standardized in relation to a given period of  
24 time.

25           (b) The employee must customarily and regularly exercise discretion and  
26 independent judgment; and,

27           (c) The employee earns a monthly salary equivalent to no less than two (2) times the  
28



1 state minimum wage for full-time employment.

2 PLAINTIFF was not a professional because PLAINTIFF failed to meet the requirements of  
3 being a "professional" within the meaning of the applicable Wage Order.

4 54. PLAINTIFF does not fit the definition of an exempt executive, administrative,  
5 or professional employee because:

6 (a) PLAINTIFF did not work as an executive or administrator; and,

7 (b) The professional exemption does not apply to the PLAINTIFF because  
8 PLAINTIFF did not meet all the applicable requirements to work under the  
9 professional exemption for the reasons set forth above in this Complaint.

10 55. The PLAINTIFF worked more than eight (8) hours in a workday, forty (40) hours  
11 in a workweek, and/or worked on the seventh (7th) consecutive day of a workweek.

12 56. During the RELEVANT TIME PERIOD, DEFENDANT failed to pay the  
13 PLAINTIFF overtime compensation for the hours PLAINTIFF worked in excess of the  
14 maximum hours permissible by law as required by Cal. Lab. Code §§ 510 and 1198, even  
15 though the PLAINTIFF was regularly required to work, and did in fact work, overtime hours.

16 57. By virtue of DEFENDANT's unlawful failure to pay additional compensation  
17 to the PLAINTIFF for PLAINTIFF's overtime hours during the RELEVANT TIME PERIOD,  
18 the PLAINTIFF has suffered an economic injury in amounts which are presently unknown to  
19 PLAINTIFF and which will be ascertained according to proof at trial.

20 58. DEFENDANT knew or should have known that during the RELEVANT TIME  
21 PERIOD the PLAINTIFF was misclassified as exempt and DEFENDANT systematically  
22 elected, either through intentional malfeasance or gross nonfeasance, not to pay PLAINTIFF  
23 for PLAINTIFF's overtime labor as a matter of uniform corporate policy, practice and  
24 procedure.

25 59. Therefore, the PLAINTIFF requests recovery of overtime compensation  
26 according to proof, interest, costs, as well as the assessment of any statutory penalties against  
27 DEFENDANT, in a sum as provided by the California Labor Code and/or other statutes.

28 60. In performing the acts and practices herein alleged in violation of labor laws

1 and refusing to provide the requisite overtime compensation, during the RELEVANT TIME  
 2 PERIOD, DEFENDANT acted intentionally, oppressively, and maliciously toward the  
 3 PLAINTIFF with a conscious and utter disregard of PLAINTIFF's legal rights, or the  
 4 consequences to PLAINTIFF, and with the despicable intent of depriving PLAINTIFF of his  
 5 property and legal rights and otherwise causing PLAINTIFF injury in order to increase  
 6 corporate profits at the expense of the PLAINTIFF.

### 7 8 **THIRD CAUSE OF ACTION**

#### 9 **For Failure to Provide Accurate Itemized Statements**

10 **[Cal. Lab. Code § 226]**

11 **(By PLAINTIFF Against All Defendants)**

12 61. PLAINTIFF realleges and incorporates by this reference, as though fully set forth  
 13 herein, paragraphs 1 through 60 of this Complaint.

14 62. Cal. Labor Code § 226 provides that an employer must furnish employees  
 15 with an "accurate itemized" statement in writing showing:

16 (1) gross wages earned,

17 (2) total hours worked by the employee, except for any employee whose compensation  
 18 is solely based on a salary and who is exempt from payment of overtime under  
 19 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare  
 20 Commission,

21 (3) the number of piece-rate units earned and any applicable piece rate if the employee  
 22 is paid on a piece-rate basis,

23 (4) all deductions, provided that all deductions made on written orders of the employee  
 24 may be aggregated and shown as one item,

25 (5) net wages earned,

26 (6) the inclusive dates of the period for which the employee is paid,

27 (7) the name of the employee and his or her social security number, except that by  
 28 January 1, 2008, only the last four digits of his or her social security number or an



1 employee identification number other than a social security number may be shown on  
2 the itemized statement,

3 (8) the name and address of the legal entity that is the employer, and

4 (9) all applicable hourly rates in effect during the pay period and the corresponding  
5 number of hours worked at each hourly rate by the employee.

6 63. During the RELEVANT TIME PERIOD, DEFENDANT violated Labor Code  
7 § 226 in that DEFENDANT failed to provide an accurate wage statement in writing that  
8 properly and accurately itemized the number of hours worked by the PLAINTIFF at the  
9 effective regular rates of pay and the effective overtime rates of pay.

10 64. DEFENDANT knowingly and intentionally failed to comply with Labor Code  
11 § 226, causing damages to the PLAINTIFF. These damages include, but are not limited to,  
12 costs expended calculating the true hours worked and the amount of employment taxes which  
13 were not properly paid to state and federal tax authorities. These damages are difficult to  
14 estimate. Therefore, the PLAINTIFF may elect to recover liquidated damages of \$50.00 for the  
15 initial pay period in which the violation occurred, and \$100.00 for each violation in subsequent  
16 pay period pursuant to Labor Code § 226, in an amount according to proof at the time of trial  
17 (but in no event more than \$4,000.00 for the PLAINTIFF).

#### 18 19 **FOURTH CAUSE OF ACTION**

#### 20 **Violation of the California Family Rights Act ("CFRA")**

21 **[Cal. Govt. Code § 12945.2 et. seq.]**

22 **(By PLAINTIFF Against All Defendants)**

23 65. PLAINTIFF realleges and incorporates by this reference, as though fully set forth  
24 herein, paragraphs 1 through 64 of this Complaint.

25 66. DEFENDANT is an employer covered by the CFRA.

26 67. PLAINTIFF is an employee who has more than 12 months of service with the  
27 DEFENDANT and at least 1,250.00 hours of service with the DEFENDANT during the 12  
28 months of employment prior to taking family leave.

1           68.     PLAINTIFF began his leave on or about April 15, 2012 to care for his ailing  
2 mother who had a stroke in October of 2011. PLAINTIFF provided notice to DEFENDANT  
3 that he was seeking leave for this purpose by providing DEFENDANT with an Intermittent  
4 Request Form. The leave was taken by PLAINTIFF to provide care and support for the serious  
5 medical condition suffered by PLAINTIFF'S mother.

6           69.     While PLAINTIFF was on lawfully protected family care and medical leave,  
7 DEFENDANT notified PLAINTIFF that his leave was not approved because additional  
8 information was needed to complete the Intermittent Request Form. PLAINTIFF made his best  
9 efforts to complete the information by contacting his mother's attending physician repeatedly.  
10 PLAINTIFF informed DEFENDANT that additional time was needed to provide the  
11 information because the attending physician had not responded to PLAINTIFF'S repeated  
12 requests for information. PLAINTIFF also provided DEFENDANT with the name and contact  
13 information of the attending physician.

14           70.     DEFENDANT unlawfully indicated refusal to establish PLAINTIFF'S right to  
15 take protected leave and terminated PLAINTIFF'S employment on or about May 22, 2012.  
16 Such acts which terminated PLAINTIFF'S employment and discharge of PLAINTIFF  
17 constitutes unlawful discrimination against PLAINTIFF for his exercise of his right to family  
18 care and medical leave.

19           71.     DEFENDANT committed the acts described in this complaint oppressively,  
20 fraudulently, and maliciously, entitling PLAINTIFF to an award of punitive damages against  
21 DEFENDANT in an amount appropriate to punish and make an example of DEFENDANT.  
22 Wherefore, PLAINTIFF prays for damages as further set forth below.

23  
24                   **FIFTH CAUSE OF ACTION**

25                   **Wrongful Termination**

26                   **(By PLAINTIFF Against All Defendants)**

27           72.     PLAINTIFF realleges and incorporates by this reference, as though fully set forth  
28 herein, paragraphs 1 through 71 of this Complaint.

73. California has established a substantial and fundamental public policy against harassment and discrimination on the basis of the exercise of the lawfully protected activity of taking unpaid, leave of absence to care for family members. This policy is partially reflected in statutory form in legislation including; *inter alia*, the Fair Employment and Housing Act Government Code § 12900 *et. seq.* These policies are further supported by the case law interpreting these statutes.

74. PLAINTIFF was involuntarily terminated by DEFENDANT on May 22, 2012 in retaliation for PLAINTIFF'S exercising his right to take unpaid leave to care for the serious medical condition suffered by PLAINTIFF'S ailing mother.

75. DEFENDANT unlawfully subjected PLAINTIFF to an adverse employment set by terminating his employment because of his exercise of his right to CFRA leave. As a result of DEFENDANTS' willful, knowing, and intentional termination of PLAINTIFF in violation of public policy, he has sustained various damages both economic and noneconomic, including *inter alia* loss of earnings, loss of benefits, and emotional distress, all subject to proof at trial.

76. DEFENDANT'S actions alleged herein, and in violation of Govt. Code § 12940, were oppressive, malicious, and/or fraudulent as defined in Civil Code § 3294. Accordingly, PLAINTIFF also requests the award of punitive damages in an amount sufficient to deter Defendants from engaging in similar future behavior, according to proof at trial.

#### SIXTH CAUSE OF ACTION

**Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* ("FLSA")**

**(By PLAINTIFF against DEFENDANT)**

77. PLAINTIFF, realleges and incorporates by this reference, as though fully set forth herein, paragraphs 1 through 76 of this Complaint.

78. DEFENDANT is engaged in communication, business, and transmission between the states, and is, therefore, engaged in commerce within the meaning of 29 U.S.C. § 203(b).

79. 29 U.S.C. § 255 provides that a three-year statute of limitations applies to willful violations of the FLSA.

1 80. 29 U.S.C. § 207(a)(1) provides in pertinent part:

2 Except as otherwise provided in this section, no employer shall employ any of his  
3 employees who in any workweek is engaged in commerce or in the production  
4 of goods for commerce, or is employed in an enterprise engaged in commerce or  
5 in the production of goods for commerce, for a workweek longer than forty hours  
6 unless such employee receives compensation for his employment in excess of the  
7 hours above specified at a rate not less than one and one-half times the regular  
8 rate at which he is employed.

9 81. Section 213(a)(1) of the FLSA provides that the overtime pay requirement does  
10 not apply to:

11 any employee employed in a bona fide executive, administrative, or professional  
12 capacity (including any employee employed in the capacity of academic  
13 administrative personnel or teacher in elementary or secondary schools), or in the  
14 capacity of outside salesman (as such terms are defined and delimited from time  
15 to time by regulations of the Secretary, subject to the provisions of the  
16 Administrative Procedure Act [5 USCS §§ 551 et seq.] except [that] an employee  
17 of a retail or service establishment shall not be excluded from the definition of  
18 employee employed in a bona fide executive or administrative capacity because  
19 of the number of hours in his workweek which he devotes to activities not  
20 directly or closely related to the performance of executive or administrative  
21 activities, if less than 40 per centum of his hours worked in the workweek are  
22 devoted to such activities).

23 82. DEFENDANT has willfully engaged in a widespread pattern and practice of  
24 violating the provisions of the FLSA, as detailed above, by uniformly designating certain  
25 employees as "exempt" employees, by their job title and without regard to DEFENDANT's  
26 realistic expectations and actual overall requirements of the job, including the PLAINTIFF who  
27 worked on the production side of DEFENDANT's business enterprise. This was done in an  
28 illegal attempt to avoid payment of overtime wages and other benefits in violation of the FLSA  
and Code of Federal Regulations requirements.

83. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, the  
PLAINTIFF is entitled to overtime compensation for all overtime hours actually worked, at a  
rate not less than one and one-half times their regular rate of pay for all hours worked in excess  
of forty (40) hours in any workweek. DEFENDANT's failure to pay overtime wages as  
required by federal law was willful and not in good faith.

84. 29 C.F.R. 541.2 establishes that a job title alone is insufficient to establish the  
exempt status of an employee. The exempt or nonexempt status of any particular employee  
must be determined on the basis of whether the employee's salary and duties meet the

1 requirements of the regulations in this part.

2       85. The exemptions of the FLSA as listed in section 13(a), and as explained by 29  
3 C.F.R. 541.3, do not apply to the PLAINTIFF because their work consists of non-management,  
4 production line labor performed with skills and knowledge acquired from on-the-job training,  
5 rather than from the prolonged course of specialized intellectual instruction required for exempt  
6 learned professional employees such as medical doctors, architects and archeologists. Plaintiff  
7 did not hold an advanced degree, have not taken any prolonged course of specialization, and/or  
8 have attained the vast majority of the skills they use as employees of DEFENDANT from on-  
9 the-job training.

10       86. For an employee to be exempt as a bona fide "commissioned salesperson," all  
11 the following criteria must be met and DEFENDANT has the burden of proving that:

- 12       (a) The employee's primary duty must be making sales as defined to include any  
13 sale, exchange, contract to sell, consignment sale, shipment for sale, or other  
14 disposition; or
- 15       (b) The employee must obtain orders or contracts for services or for the use of  
16 facilities for which a consideration will be paid by the client or customer; and,
- 17       (c) The employee's earnings must be exceed one and one-half times the minimum  
18 wage; and,
- 19       (d) The employee must earn more than half of their income from bona fide sales  
20 commissions; and,
- 21       (e) The employee must be primarily engaged in duties which meet the test of  
22 exemption.

23 PLAINTIFF was not an inside salesperson because he fails to meet the requirements of being  
24 an "commissioned salesperson" within the meaning of the applicable Wage Order.

25       87. For an employee to be exempt as a bona fide "outside salesperson," all the  
26 following criteria must be met and DEFENDANT has the burden of proving that:

- 27       (a) The employee's primary duty must be making sales as defined to include any  
28 sale, exchange, contract to sell, consignment sale, shipment for sale, or other

1 disposition; or

2 (b) The employee must obtain orders or contracts for services or for the use of  
3 facilities for which a consideration will be paid by the client or customer; and,

4 (c) The employee must customarily and regularly spend more than half the work  
5 time away from the employer's place of business engaged in sales-related  
6 activity; and,

7 (d) The employee must be primarily engaged in duties which meet the test of  
8 exemption.

9 PLAINTIFF is not an outside salesperson because he fails to meet the requirements of being  
10 an "outside salesperson" within the meaning of the applicable Wage Order.

11 88. For an employee to be exempt as a bona fide "executive," all the following  
12 criteria must be met and DEFENDANT has the burden of proving that:

13 (a) The employee's primary duty must be management of the enterprise, or of a  
14 customarily recognized department or subdivision;

15 (b) The employee must customarily and regularly direct the work of at least two (2)  
16 or more other employees;

17 (c) The employee must have the authority to hire and fire, or to command  
18 particularly serious attention to his or her recommendations on such actions  
19 affecting other employees; and,

20 (d) The employee must be primarily engaged in duties which meet the test of  
21 exemption.

22 PLAINTIFF was not an executive because he fails to meet the requirements of being an  
23 "executive " under section 13 of the FLSA and 29 C.F.R. 541.100. Moreover, PLAINTIFF did  
24 not manage the work of two or more other employees in a customarily recognized department  
25 or subdivision of the employer, and whose recommendations as to the hiring, firing,  
26 advancement, promotion or other change of status of the other employees were given particular  
27 weight and therefore, he does not qualify for the executive exemption.

28 89. For an employee to be exempt as a bona fide "administrator," all of the following



1 criteria must be met and DEFENDANT has the burden of proving that:

- 2 (a) The employee must perform office or non-manual work directly related to
- 3 management or general business operation of the employer or the employer's
- 4 customers;
- 5 (b) The employee must customarily and regularly exercise discretion and
- 6 independent
- 7 judgment with respect to matters of significance; and,
- 8 (c) The employee must regularly and directly assist a proprietor or an exempt
- 9 administrator; or,
- 10 (d) The employee must perform under only general supervision, work requiring
- 11 special training, experience, or knowledge; and,
- 12 (e) The employee must be primarily engaged in duties which meet the test of
- 13 exemption.

14 PLAINTIFF is not an administrator because he fails to meet the requirements of for being an  
15 "administrator" under section 13(a) of the FLSA and 29 C.F.R. 541.300.

16 90. For an employee to be exempt as a bona fide "professional", DEFENDANT has  
17 the burden of proving that the primary duty of the employee is the performance of work that:

- 18 (a) Requires knowledge of an advanced type in a field of science or learning
- 19 customarily acquired by a prolonged course of specialized intellectual instruction;
- 20 or
- 21 (b) Requires invention, imagination, originality or talent in a recognized field of
- 22 artistic or creative endeavor.

23 PLAINTIFF is not a professional because he fails to meet the requirements of being an  
24 "professional" within the meaning of 29 CFR 541.300. Further, PLAINTIFF operated under  
25 intense scrutiny from management and are strictly dictated by written guidelines and  
26 standardized procedures.

27 91. PLAINTIFF, worked more than forty (40) hours in a workweek. At all relevant  
28 times while PLAINTIFF was classified as exempt, DEFENDANT failed to pay the PLAINTIFF

1 overtime compensation for the hours he have worked in excess of the maximum hours  
 2 permissible by law as required by section 207 of the FLSA, even though the PLAINTIFF was  
 3 regularly required to work, and did in fact work, overtime hours.

4 92. For purposes of the Fair Labor Standards Act, the employment practices of  
 5 DEFENDANT were and are uniform throughout the United States in all respects material to the  
 6 claims asserted in this Complaint.

7 93. There are no other exemptions applicable to the PLAINTIFF.

8 94. As a result of DEFENDANT's failure to pay overtime compensation for  
 9 overtime hours worked, as required by the FLSA, the PLAINTIFF was damaged in an amount  
 10 to be proved at trial.

11 95. Therefore, the PLAINTIFF demands that he be paid overtime compensation as  
 12 required by the FLSA for every hour of overtime worked in any workweek for which he was  
 13 not compensated, plus interest and statutory costs as provided by law.

#### 14 **PRAYER FOR RELIEF**

15 WHEREFOR, the PLAINTIFF prays for judgment against each Defendant, jointly and  
 16 severally, as follows:

17 1. On the UCL claim:

18 A) An order requiring DEFENDANT to correctly calculate and pay all wages and  
 19 all sums unlawfully withheld from compensation due to the PLAINTIFF; and,

20 B) Restitutionary disgorgement of DEFENDANT's ill-gotten gains for restitution  
 21 of the sums incidental to DEFENDANT's violations due to the PLAINTIFF; and,

22 2. On the California Labor Code claims:

23 A) Compensatory damages, according to proof at trial, including compensatory  
 24 damages for overtime compensation due to the PLAINTIFF plus interest thereon  
 25 at the statutory rate; and,

26 B) The greater of all actual damages or fifty dollars (\$50) for the initial pay period  
 27 in which a violation occurs and one hundred dollars (\$100) for each violation in  
 28 a subsequent pay period, not exceeding an aggregate penalty of four thousand



1 dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226.

2 4. On all claims:

3 A) An award of interest, including prejudgment interest at the legal rate;

4 B) Such other and further relief as the Court deems just and equitable; and,

5 C) An award of penalties and cost of suit, but neither this prayer nor any other  
6 allegation or prayer in this Complaint is to be construed as a request, under any  
7 circumstance, that would result in a request for attorneys' fees under Cal. Lab.  
8 Code § 218.5.

9 5. On Retaliation and Wrongful Termination Claim

10 A) Compensatory damages, according to proof at trial, but in excess of \$25,000.

11 B) For punitive damages in an amount necessary to make an example of and to  
12 punish DEFENDANT and deter DEFENDANT from engaging in future similar  
13 conduct;

14 C) For loss of earnings (both past and future);

15 D) For interest at the legal rate in an amount according to proof;

16 6. On the FLSA Claim

17 A) That the PLAINTIFF recover compensatory damages and an equal amount of  
18 liquidated damages as provided under the law and in 29 U.S.C. § 216(b).

19

20

21

Dated: \_\_\_\_\_, 2012 BLUMENTHAL, NORDREHAUG & BHOWMIK

22

By: \_\_\_\_\_  
Norman B. Blumenthal  
Attorneys for Plaintiff

23

24

25

26

27

28

**DEMAND FOR JURY TRIAL**

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: \_\_\_\_\_, 2012 BLUMENTHAL, NORDREHAUG & BHOWMIK

By: \_\_\_\_\_  
Norman B. Blumenthal  
Attorneys for Plaintiff

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# **EXHIBIT H**

**BLUMENTHAL, NORDREHAUG & BHOWMIK**

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Attorneys for Plaintiff

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF LOS ANGELES**

ISAAC CURRY, individually,

Plaintiff,

vs.

WELLS FARGO BANK, N.A.; and  
DOES 1 through 50 inclusive,

Defendants.

CASE No. YC066168

**FIRST AMENDED COMPLAINT FOR:**

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE § 17200 *et seq.*;
2. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF CAL. LAB. CODE §§ 510, 551, 552, 1194 AND 1198, *et seq.*;
3. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
4. RETALIATION IN VIOLATION OF FEHA (Cal. Govt. Code § 12940);
5. WRONGFUL TERMINATION; and,
6. VIOLATION OF FLSA, 29 USC 201, *et seq.*

**DEMAND FOR A JURY TRIAL**

1 Plaintiff Isaac Curry ("PLAINTIFF"), an individual, alleges on information and belief,  
2 except for his own acts and knowledge, the following:

3  
4 **THE PARTIES**

5 1. Defendant Wells Fargo Bank, N.A. is a diversified financial services company  
6 providing banking, insurance, investments, mortgage, and consumer and commercial finance  
7 through more than 10,000 stores and 12,000 ATMs and the Internet across North America and  
8 internationally. Wells Fargo Bank, N.A. hereinafter also referred to as "WELLS FARGO" or  
9 "DEFENDANT" employs more than 270,000 team members worldwide and has assets of \$1.2  
10 trillion as of 2010.

11 2. According to DEFENDANT's website, the company is headquartered in San  
12 Francisco, California, and maintains the largest number of its banking, mortgage, and brokerage  
13 stores in California. DEFENDANT is the industry's number one home mortgage lender and  
14 ranks first in the number of mortgage stores (2,400) operated nationwide.

15 3. An employer's obligation to pay its employees wages is more than a matter of  
16 private concern between the parties. That obligation is founded on a compelling public policy  
17 judgment that employees are entitled to work a livable number of hours at a livable wage. In  
18 addition, statutes and regulations that compel employers to pay overtime relate to fundamental  
19 issues of social welfare worthy of protection. The requirement to pay overtime wages extends  
20 beyond the benefits individual workers receive because overtime wages discourage employers  
21 from concentrating work in a few overburdened hands and encourage employers to instead hire  
22 additional employees. Especially in today's economic climate, the importance of spreading  
23 available work to reduce unemployment cannot be overestimated.

24 4. As part of their business, WELLS FARGO employs a fleet of so called "Home  
25 Mortgage Consultants." PLAINTIFF, as a Home Mortgage Consultant, was and is primarily  
26 engaged in the core, day-to-day business activities of WELLS FARGO. The Home Mortgage  
27 Consultants sell mortgage loan products. As a Home Mortgage Consultant, PLAINTIFF, in  
28 performing his sales duties, spends virtually all of his time working in a Wells Fargo office.

1 The primary tools PLAINTIFF employs in performing his sales function are the telephone and  
2 the computer. PLAINTIFF, since the inception of his employment with DEFENDANT, also  
3 spends much of his time and energy engaged in the clerical tasks associated with loan  
4 processing.

5 5. As a result, the PLAINTIFF is and has been engaged in a type of work that  
6 requires no exercise of independent judgment or discretion as to any matter of significance.  
7 Therefore, the PLAINTIFF did not have duties or authority with regards to the management or  
8 general business operations of DEFENDANT or DEFENDANT's clients and should therefore  
9 have been properly classified as a non-exempt employee.

10 6. Plaintiff Isaac Curry ("PLAINTIFF") has been employed by WELLS FARGO in  
11 Culver City, California as a Home Mortgage Consultant from March of 2010 to May 22, 2012.

12 7. The position of Home Mortgage Consultant was represented by WELLS FARGO  
13 to the PLAINTIFF as an exempt and salaried position. On or around May 26, 2011,  
14 PLAINTIFF was reclassified as a non-exempt and hourly employee of DEFENDANT. Over  
15 the entire course of PLAINTIFF's employment with DEFENDANT, he has performed the same  
16 job duties. From the period of March of 2010 until on or around May 26, 2011 (the  
17 "RELEVANT TIME PERIOD"), PLAINTIFF was classified as an exempt and salaried  
18 employee.

19 8. As defined by DEFENDANT's comprehensive corporate policies and  
20 procedures, the duties that the PLAINTIFF primarily engaged in includes selling mortgage loan  
21 products. In addition, the PLAINTIFF is and was also engaged in clerical tasks and paperwork  
22 associated with loan processing in accordance with DEFENDANT's established specific  
23 procedures and protocols which govern and control every aspect of the work performed by the  
24 PLAINTIFF as a Home Mortgage Consultant. These standardized procedures mirror the  
25 realities of the workplace evidencing a uniformity of work among the Home Mortgage  
26 Consultants and negate any exercise of independent judgment and discretion as to any matter  
27 of significance.

28

1           9.     The work schedule for PLAINTIFF was set by DEFENDANT. Generally,  
2 during the RELEVANT TIME PERIOD while the PLAINTIFF was classified as an exempt  
3 employee, he worked approximately ten (10) hours each workday and approximately ten (10)  
4 hours of overtime each workweek.

5           10.    During the RELEVANT TIME PERIOD, DEFENDANT had not established an  
6 alternative workweek election for the PLAINTIFF for ten (10) to twelve (12) hour workdays.

7           11.    During the RELEVANT TIME PERIOD, PLAINTIFF was not provided with  
8 overtime compensation and other benefits for the overtime hours worked as required by law due  
9 to DEFENDANT's unsubstantiated classification of PLAINTIFF as "exempt" by  
10 DEFENDANT.

11          12.    As a matter of company policy, practice, and procedure, DEFENDANT had  
12 unlawfully, unfairly and/or deceptively classified PLAINTIFF as exempt, until on or around  
13 May 26, 2011, based on job title alone, failed to pay the required overtime compensation and  
14 otherwise failed to comply with all applicable labor laws with respect to PLAINTIFF.

15          13.    The true names and capacities, whether individual, corporate, subsidiary,  
16 partnership, associate or otherwise of Defendants DOES 1 through 50, inclusive, are presently  
17 unknown to the PLAINTIFF who therefore sues these Defendants by such fictitious names  
18 pursuant to Cal. Civ. Proc. Code § 474. The PLAINTIFF will seek leave to amend this  
19 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they  
20 are ascertained. PLAINTIFF is informed and believes, and based upon that information and  
21 belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50,  
22 inclusive, are responsible in some manner for one or more of the events and happenings that  
23 proximately caused the injuries and damages hereinafter alleged.

24          14.    The agents, servants and/or employees of the Defendants and each of them  
25 acting on behalf of the Defendants acted within the course and scope of his, her or its authority  
26 as the agent, servant and/or employee of the Defendants, and personally participated in the  
27 conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein.  
28 Consequently, the acts of each Defendants are legally attributable to the other Defendants and

1 all Defendants are jointly and severally liable to the PLAINTIFF for the loss sustained as a  
2 proximate result of the conduct of the Defendants' agents, servants and/or employees.

### 3 4 THE CONDUCT

5 15. The primary duty required of the PLAINTIFF as a Home Mortgage Consultant  
6 as defined by DEFENDANT was executed by the PLAINTIFF through the performance of non-  
7 exempt labor within a defined skill set.

8 16. Although the PLAINTIFF primarily performed non-exempt labor, DEFENDANT  
9 instituted a blanket classification policy, practice and procedure by which the PLAINTIFF was  
10 classified as exempt from overtime compensation. By reason of this uniform exemption  
11 practice, policy and procedure applicable to the PLAINTIFF, during the RELEVANT TIME  
12 PERIOD, DEFENDANT committed acts of unfair competition in violation of the California  
13 Unfair Competition law, Cal. Bus. & Prof. Code § 17200 (the "UCL"), by engaging in a  
14 company-wide policy, practice and procedure which failed to properly classify the PLAINTIFF  
15 and thereby failed to pay him overtime wages for documented overtime hours worked and  
16 provide him with all legally required meal and rest breaks. The proper classification of the  
17 PLAINTIFF is DEFENDANT's burden. As a result of DEFENDANT's intentional disregard  
18 of the obligation to meet this burden, DEFENDANT failed to pay all required overtime  
19 compensation for work performed by the PLAINTIFF and violated the California Labor Code  
20 and regulations promulgated thereunder as herein alleged over the RELEVANT TIME  
21 PERIOD. In addition, DEFENDANT failed to provide all of the legally required meal and rest  
22 breaks to the PLAINTIFF as required by the applicable Wage Order and Labor Code. On or  
23 around May 26, 2011, DEFENDANT reclassified PLAINTIFF as a non-exempt and hourly  
24 employee and began properly paying him for overtime wages and providing him all legally  
25 required meal and rest breaks.

26 17. DEFENDANT, as a matter of law, has the burden of proving that (a) employees  
27 are properly classified as exempt and that (b) DEFENDANT otherwise complies with  
28 applicable laws. Other than the initial classification of the PLAINTIFF as exempt from being



1 paid overtime based on job title alone, DEFENDANT had no business policy, practice, or  
2 procedure to ensure that the PLAINTIFF was properly classified as exempt, and in fact, as a  
3 matter of corporate policy erroneously and unilaterally classified the PLAINTIFF as exempt  
4 based on job title alone.

5 18. Over the course of his employment with DEFENDANT, including currently, the  
6 PLAINTIFF has primarily performed non-exempt job duties, but during the RELEVANT TIME  
7 PERIOD was nevertheless classified by DEFENDANT as exempt from overtime pay and  
8 worked more than eight (8) hours a day, forty (40) hours a week, and/or on the seventh (7th)  
9 consecutive day of a workweek.

10 19. During the RELEVANT TIME PERIOD, PLAINTIFF was not primarily engaged  
11 in work of a type that was directly related to the management or general business operations of  
12 the employer's customers, when giving these words a fair but narrow construction. PLAINTIFF  
13 was also not primarily engaged in work of a type that was performed at the level of the policy  
14 or management of DEFENDANT. PLAINTIFF was also not primarily engaged in work  
15 requiring knowledge of an advanced type in a field or science or learning customarily acquired  
16 by a prolonged course of specialized intellectual instruction and study, but rather his work  
17 primarily involved the performance of routine clerical activities. The work of a Home  
18 Mortgage Consultant of DEFENDANT is work wherein the PLAINTIFF was and is primarily  
19 engaged in the day-to-day business of WELLS FARGO. The Home Mortgage Consultants sell  
20 mortgage loan products. In addition, the PLAINTIFF was also engaged in clerical tasks, and  
21 paperwork associated with loan processing.

22 20. The fact that the work of the PLAINTIFF may have involved work using a  
23 specialized skill set or technical abilities in a defined technical area does not mean that the  
24 PLAINTIFF is exempt from overtime wages. Indeed, the exercise of discretion and  
25 independent judgment must be more than the use of a highly technical skill set described in a  
26 manual or other sources. The work that the PLAINTIFF was primarily engaged in is the work  
27 that is required to be performed as part of the day-to-day-business activity of DEFENDANT.  
28 As a result, the PLAINTIFF was primarily engaged in work that falls on the production or the

1 non-exempt administrative sale side of the administrative/production worker dichotomy and  
2 should have been properly classified as a non-exempt employee.

3 21. PLAINTIFF was classified as exempt from California overtime and related laws  
4 by DEFENDANT during the RELEVANT TIME PERIOD, however, he did not have  
5 managerial duties or authority. Furthermore, the PLAINTIFF, as a Home Mortgage Consultant,  
6 was, and currently continues to be, tightly controlled by company policy and by his supervisors,  
7 did not exercise discretion or independent judgment as to matters of significance, and his job  
8 duties were not directly related to DEFENDANT's management policies or general business  
9 operation.

10 22. During the RELEVANT TIME PERIOD, PLAINTIFF was classified and treated  
11 by DEFENDANT as exempt. During that time, DEFENDANT failed to take the proper steps  
12 to determine whether the PLAINTIFF was properly classified under the applicable Industrial  
13 Welfare Commission Wage Order (Wage Order 4-2001) and Cal. Lab. Code §§ 510, *et seq.* as  
14 exempt from applicable California labor laws. Since DEFENDANT had, prior to May 26,  
15 2011, affirmatively and wilfully misclassified the PLAINTIFF in compliance with California  
16 labor laws, DEFENDANT's practices violated California law. In addition, DEFENDANT  
17 acted deceptively by falsely and fraudulently telling the PLAINTIFF that he was exempt from  
18 overtime pay when DEFENDANT knew or should have known that this statement was false and  
19 not based on known facts. DEFENDANT also acted unfairly by violating the California labor  
20 laws, and as a result of this policy and practice, DEFENDANT also violated the UCL. In doing  
21 so, DEFENDANT cheated the competition by paying the PLAINTIFF less than the amount  
22 competitors paid who complied with the law and cheated the PLAINTIFF by not paying him  
23 in accordance with California law. In addition, DEFENDANT failed to provide all of the  
24 legally required meal and rest breaks to the PLAINTIFF as required by the applicable Wage  
25 Order and Labor Code. During the RELEVANT TIME PERIOD, DEFENDANT did not have  
26 a policy or practice which provided meal and rest breaks to the PLAINTIFF. As a result,  
27 DEFENDANT's failure to provide the PLAINTIFF with all legally required meal and rest  
28 breaks is evidenced by DEFENDANT's business records which contain no record of these

1 breaks.

2 23. DEFENDANT, during the RELEVANT TIME PERIOD, also failed to provide  
3 the PLAINTIFF with a wage statement in writing that accurately sets forth gross wages earned,  
4 all applicable hourly rates in effect during the pay period and the corresponding number of  
5 hours worked at each hourly rate by the PLAINTIFF. This conduct violated California Labor  
6 Code § 226. The pay stubs also did not accurately display anywhere the PLAINTIFF's overtime  
7 hours and applicable rates of overtime pay for the pay period.

8 24. By reason of this conduct applicable to the PLAINTIFF, during the RELEVANT  
9 TIME PERIOD, DEFENDANT committed acts of unfair competition in violation of the  
10 California Unfair Competition law, Cal. Bus. & Prof. Code § 17200 (the "UCL"), by engaging  
11 in a company-wide policy and procedure which failed to correctly classify the PLAINTIFF as  
12 non-exempt. The proper classification of PLAINTIFF is DEFENDANT's burden. As a result  
13 of DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT  
14 failed to properly calculate and/or pay all required overtime compensation for work performed  
15 by the PLAINTIFF and violated the applicable Wage Order, the California Labor Code and the  
16 regulations promulgated thereunder as herein alleged during the RELEVANT TIME PERIOD.

### 17 JURISDICTION AND VENUE

18  
19 25. This Court has jurisdiction over this action pursuant to Cal. Code of Civ. Proc.  
20 § 410.10, Cal. Business & Professions Code § 17203, and the California Family Care and  
21 Medical Leave Act, California Government Code § 12945.2 et seq..

22 26. Venue is proper in this County pursuant to Cal. Code of Civ. Proc. §§ 395 and  
23 395.5, because PLAINTIFF resides in this County and WELLS FARGO (i) currently maintains  
24 and at all relevant times maintained offices and facilities in this County and/or conducts  
25 substantial business in this County, and (ii) committed the wrongful conduct herein alleged in  
26 this County against PLAINTIFF.

27 27. PLAINTIFF received a right to sue from DFEH at the time of the filing of his  
28 charge of retaliation on June 13, 2012.

**FIRST CAUSE OF ACTION**

**For Unlawful Business Practices**

**[Cal. Bus. And Prof. Code § 17200 *et seq.*]**

**(By PLAINTIFF Against All Defendants)**

28. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, paragraphs 1 through 27 of this Complaint.

29. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof. Code § 17021.

30. California Business & Professions Code § 17200 *et seq.* (the "UCL") defines unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair competition as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

California Business & Professions Code § 17203.

31. By the conduct alleged herein, during the RELEVANT TIME PERIOD, DEFENDANT had engaged in a business practice which violated California law, including but not limited to, Wage Order 4-2001, the California Code of Regulations, and the California Labor Code Sections 226(a), 226.7, 510, 1194 & 1198, and for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as may be necessary to remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

32. By the conduct alleged herein, DEFENDANT's practices during the RELEVANT TIME PERIOD were unlawful and unfair in that these practices violated public policy, were immoral, unethical, oppressive, unscrupulous or substantially injurious to employees, and were without valid justification or utility for which this Court should issue

1 equitable and injunctive relief pursuant to Section 17203 of the California Business &  
2 Professions Code, including restitution of wages wrongfully withheld.

3 33. By the conduct alleged herein, DEFENDANT's practices during the  
4 RELEVANT TIME PERIOD were deceptive and fraudulent in that DEFENDANT's uniform  
5 policy and practice was to represent to PLAINTIFF that he was exempt from overtime pay  
6 when in fact these representations were false and likely to deceive, for which this Court should  
7 issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code § 17203, including  
8 restitution of wages wrongfully withheld.

9 34. By the conduct alleged herein, DEFENDANT's practices during the  
10 RELEVANT TIME PERIOD were also unlawful, unfair and deceptive in that DEFENDANT's  
11 employment practices caused the PLAINTIFF to be underpaid during his employment with  
12 DEFENDANT.

13 35. By and through the unlawful and unfair business practices described herein,  
14 during the RELEVANT TIME PERIOD, DEFENDANT had obtained valuable property, money  
15 and services from the PLAINTIFF and had deprived PLAINTIFF of valuable rights and benefits  
16 guaranteed by law and contract, all to the detriment of PLAINTIFF and to the benefit of  
17 DEFENDANT so as to allow DEFENDANT to unfairly compete against competitors who  
18 comply with the law.

19 36. All the acts described herein as violations of, among other things, the California  
20 Labor Code, California Code of Regulations, the Industrial Welfare Commission Wage Orders,  
21 and the related opinions of the Department of Labor, were unlawful, were in violation of public  
22 policy, were immoral, unethical, oppressive, and unscrupulous, and were likely to deceive the  
23 PLAINTIFF, as herein alleged, and thereby constitute deceptive, unfair and unlawful business  
24 practices in violation of Cal. Bus. and Prof. Code § 17200 *et seq.*

25 37. PLAINTIFF is entitled to, and does, seek such relief as may be necessary to  
26 restore to PLAINTIFF the money and property which DEFENDANT has acquired, or of which  
27 the PLAINTIFF has been deprived, by means of the above described unlawful and unfair  
28 business practices, including earned but unpaid wages for all hours worked.

38. Throughout the RELEVANT TIME PERIOD, it was also DEFENDANT's uniform policy and practice to not provide all legally required meal and rest breaks to the PLAINTIFF. During the RELEVANT TIME PERIOD, DEFENDANT failed to provide any compensated work time for failing to provide such breaks to the PLAINTIFF.

39. Therefore, the PLAINTIFF demands on behalf of himself, one (1) hour of pay for each workday in which a meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay for each workday in which a second meal period was not timely provided for each ten (10) hours of work.

40. PLAINTIFF further demands on behalf of himself, one (1) hour of pay for each workday in which a rest period was not timely provided as required by law.

41. PLAINTIFF is further entitled to, and does, seek a declaration that the described business practices are unlawful, unfair and deceptive.

42. As a result of the unlawful and unfair business practices described herein during the RELEVANT TIME PERIOD, the PLAINTIFF has suffered irreparable legal and economic harm as a result of DEFENDANT's unlawful and unfair business practices.

## **SECOND CAUSE OF ACTION**

### **For Failure To Pay Overtime Compensation**

**[Cal. Lab. Code §§ 510, 551, 552, 1194 and 1198]**

**(By PLAINTIFF Against All Defendants)**

43. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, paragraphs 1 through 42 of this Complaint.

44. Cal. Lab. Code § 510 states in relevant part:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate



1 of pay of an employee.

2 45. Cal. Lab. Code § 551 states that, "Every person employed in any occupation of  
3 labor is entitled to one day's rest therefrom in seven."

4 46. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his  
5 employees to work more than six days in seven."

6 47. Cal. Lab. Code § 515(d) provides: "For the purpose of computing the overtime  
7 rate of compensation required to be paid to a nonexempt full-time salaried employee, the  
8 employee's regular hourly rate shall be 1/40th of the employee's weekly salary."

9 48. Cal. Lab. Code § 1194 states:

10 Notwithstanding any agreement to work for a lesser wage, any employee  
11 receiving less than the legal minimum wage or the legal overtime compensation  
12 applicable to the employee is entitled to recover in a civil action the unpaid  
balance of the full amount of this minimum wage or overtime compensation,  
including interest thereon, reasonable attorney's fees, and costs of suit.

13 49. Cal. Lab. Code § 1198 provides: "The maximum hours of work and the  
14 standard conditions of labor fixed by the commission shall be the maximum hours of work and  
15 the standard conditions of labor for employees. The employment of any employee for longer  
16 hours than those fixed by the order or under conditions of labor prohibited by the order is  
17 unlawful."

18 50. During the RELEVANT TIME PERIOD, DEFENDANT had intentionally and  
19 uniformly designated certain employees as "exempt" employees, by their job title and without  
20 regard to DEFENDANT's realistic expectations and actual overall requirements of the job,  
21 including the PLAINTIFF who worked on the production side of DEFENDANT's business.  
22 This was done in an illegal attempt to avoid payment of overtime wages and other benefits in  
23 violation of the California Labor Code and Industrial Welfare Commission requirements.

24 51. For an employee to be exempt as a bona fide "executive," all the following  
25 criteria must be met and DEFENDANT has the burden of proving that:

26 (a) The employee's primary duty must be management of the enterprise, or of a  
27 customarily recognized department or subdivision; and,  
28

- 1 (b) The employee must customarily and regularly direct the work of at least two (2)
- 2 or more other employees; and,
- 3 (c) The employee must have the authority to hire and fire, or to command
- 4 particularly serious attention to his or her recommendations on such actions
- 5 affecting other employees; and,
- 6 (d) The employee must customarily and regularly exercise discretion and
- 7 independent judgment; and,
- 8 (e) The employee must be primarily engaged in duties which meet the test of
- 9 exemption.

10 PLAINTIFF was not an executive because PLAINTIFF failed and continues to fail to meet the  
11 requirements of being an "executive" within the meaning of the applicable Wage Order.

12 52. For an employee to be exempt as a bona fide "administrator," all of the  
13 following criteria must be met and DEFENDANT has the burden of proving that:

- 14 (a) The employee must perform office or non-manual work directly related to
- 15 management policies or general business operation of the employer; and,
- 16 (b) The employee must customarily and regularly exercise discretion and
- 17 independent judgment; and,
- 18 (c) The employee must regularly and directly assist a proprietor or an exempt
- 19 administrator; or,
- 20 (d) The employee must perform, under only general supervision, work requiring
- 21 special training, experience, or knowledge, or,
- 22 (e) The employee must execute special assignments and tasks under only general
- 23 supervision; and,
- 24 (f) The employee must be primarily engaged in duties which meet the test of
- 25 exemption.

26 PLAINTIFF was not an administrator because PLAINTIFF failed to meet the requirements for  
27 being an "administrator" under the applicable Wage Order.



1           53. The Industrial Welfare Commission, in Wage Order 4-2001, at section  
2 (1)(A)(3), and Labor Code § 515 also set forth the requirements which must be complied with  
3 to place an employee in the "professional" exempt category. For an employee to be exempt as  
4 a bona fide "professional," all the following criteria must be met and DEFENDANT has the  
5 burden of proving that:

6           (a) The employee is primarily engaged in an occupation commonly recognized as a  
7 learned or artistic profession. For the purposes of this subsection, "learned or  
8 artistic profession" means an employee who is primarily engaged in the  
9 performance of:

- 10           1) Work requiring knowledge of an advanced type in a field or science or  
11 learning customarily acquired by a prolonged course of specialized  
12 intellectual instruction and study, as distinguished from a general  
13 academic education and from an apprenticeship, and from training in the  
14 performance of routine mental, manual, or physical processes, or work  
15 that is an essential part or necessarily incident to any of the above work;  
16 or,  
17           2) Work that is original and creative in character in a recognized field of  
18 artistic endeavor, and the result of which depends primarily on the  
19 invention, imagination or talent of the employee or work that is an  
20 essential part of or incident to any of the above work; and,  
21           3) Whose work is predominately intellectual and varied in character (as  
22 opposed to routine mental, manual, mechanical, or physical work) and is  
23 of such character cannot be standardized in relation to a given period of  
24 time.

25           (b) The employee must customarily and regularly exercise discretion and  
26 independent judgment; and,

27           (c) The employee earns a monthly salary equivalent to no less than two (2) times the  
28

1 state minimum wage for full-time employment.

2 PLAINTIFF was not a professional because PLAINTIFF failed to meet the requirements of  
3 being a "professional" within the meaning of the applicable Wage Order.

4 54. PLAINTIFF does not fit the definition of an exempt executive, administrative,  
5 or professional employee because:

6 (a) PLAINTIFF did not work as an executive or administrator; and,

7 (b) The professional exemption does not apply to the PLAINTIFF because  
8 PLAINTIFF did not meet all the applicable requirements to work under the  
9 professional exemption for the reasons set forth above in this Complaint.

10 55. The PLAINTIFF worked more than eight (8) hours in a workday, forty (40) hours  
11 in a workweek, and/or worked on the seventh (7th) consecutive day of a workweek.

12 56. During the RELEVANT TIME PERIOD, DEFENDANT failed to pay the  
13 PLAINTIFF overtime compensation for the hours PLAINTIFF worked in excess of the  
14 maximum hours permissible by law as required by Cal. Lab. Code §§ 510 and 1198, even  
15 though the PLAINTIFF was regularly required to work, and did in fact work, overtime hours.

16 57. By virtue of DEFENDANT's unlawful failure to pay additional compensation  
17 to the PLAINTIFF for PLAINTIFF's overtime hours during the RELEVANT TIME PERIOD,  
18 the PLAINTIFF has suffered an economic injury in amounts which are presently unknown to  
19 PLAINTIFF and which will be ascertained according to proof at trial.

20 58. DEFENDANT knew or should have known that during the RELEVANT TIME  
21 PERIOD the PLAINTIFF was misclassified as exempt and DEFENDANT systematically  
22 elected, either through intentional malfeasance or gross nonfeasance, not to pay PLAINTIFF  
23 for PLAINTIFF's overtime labor as a matter of uniform corporate policy, practice and  
24 procedure.

25 59. Therefore, the PLAINTIFF requests recovery of overtime compensation  
26 according to proof, interest, costs, as well as the assessment of any statutory penalties against  
27 DEFENDANT, in a sum as provided by the California Labor Code and/or other statutes.

28 60. In performing the acts and practices herein alleged in violation of labor laws

1 and refusing to provide the requisite overtime compensation, during the RELEVANT TIME  
2 PERIOD, DEFENDANT acted intentionally, oppressively, and maliciously toward the  
3 PLAINTIFF with a conscious and utter disregard of PLAINTIFF's legal rights, or the  
4 consequences to PLAINTIFF, and with the despicable intent of depriving PLAINTIFF of his  
5 property and legal rights and otherwise causing PLAINTIFF injury in order to increase  
6 corporate profits at the expense of the PLAINTIFF.

7  
8 **THIRD CAUSE OF ACTION**

9 **For Failure to Provide Accurate Itemized Statements**

10 **[Cal. Lab. Code § 226]**

11 **(By PLAINTIFF Against All Defendants)**

12 61. PLAINTIFF realleges and incorporates by this reference, as though fully set forth  
13 herein, paragraphs 1 through 60 of this Complaint.

14 62. Cal. Labor Code § 226 provides that an employer must furnish employees  
15 with an "accurate itemized" statement in writing showing:

16 (1) gross wages earned,

17 (2) total hours worked by the employee, except for any employee whose compensation  
18 is solely based on a salary and who is exempt from payment of overtime under  
19 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare  
20 Commission,

21 (3) the number of piecerate units earned and any applicable piece rate if the employee  
22 is paid on a piece-rate basis,

23 (4) all deductions, provided that all deductions made on written orders of the employee  
24 may be aggregated and shown as one item,

25 (5) net wages earned,

26 (6) the inclusive dates of the period for which the employee is paid,

27 (7) the name of the employee and his or her social security number, except that by  
28 January 1, 2008, only the last four digits of his or her social security number or an

1 employee identification number other than a social security number may be shown on  
2 the itemized statement,

3 (8) the name and address of the legal entity that is the employer, and

4 (9) all applicable hourly rates in effect during the pay period and the corresponding  
5 number of hours worked at each hourly rate by the employee.

6 63. During the RELEVANT TIME PERIOD, DEFENDANT violated Labor Code  
7 § 226 in that DEFENDANT failed to provide an accurate wage statement in writing that  
8 properly and accurately itemized the number of hours worked by the PLAINTIFF at the  
9 effective regular rates of pay and the effective overtime rates of pay.

10 64. DEFENDANT knowingly and intentionally failed to comply with Labor Code  
11 § 226, causing damages to the PLAINTIFF. These damages include, but are not limited to,  
12 costs expended calculating the true hours worked and the amount of employment taxes which  
13 were not properly paid to state and federal tax authorities. These damages are difficult to  
14 estimate. Therefore, the PLAINTIFF may elect to recover liquidated damages of \$50.00 for the  
15 initial pay period in which the violation occurred, and \$100.00 for each violation in subsequent  
16 pay period pursuant to Labor Code § 226, in an amount according to proof at the time of trial  
17 (but in no event more than \$4,000.00 for the PLAINTIFF).

18  
19 **FOURTH CAUSE OF ACTION**

20 **Violation of the California Family Rights Act ("CFRA")**

21 **[Cal. Govt. Code § 12945.2 et. seq.]**

22 **(By PLAINTIFF Against All Defendants)**

23 65. PLAINTIFF realleges and incorporates by this reference, as though fully set forth  
24 herein, paragraphs 1 through 64 of this Complaint.

25 66. DEFENDANT is an employer covered by the CFRA.

26 67. PLAINTIFF is an employee who has more than 12 months of service with the  
27 DEFENDANT and at least 1,250.00 hours of service with the DEFENDANT during the 12  
28 months of employment prior to taking family leave.

1           68.     PLAINTIFF began his leave on or about April 15, 2012 to care for his ailing  
2 mother who had a stroke in October of 2011. PLAINTIFF provided notice to DEFENDANT  
3 that he was seeking leave for this purpose by providing DEFENDANT with an Intermittent  
4 Request Form. The leave was taken by PLAINTIFF to provide care and support for the serious  
5 medical condition suffered by PLAINTIFF'S mother.

6           69.     While PLAINTIFF was on lawfully protected family care and medical leave,  
7 DEFENDANT notified PLAINTIFF that his leave was not approved because additional  
8 information was needed to complete the Intermittent Request Form. PLAINTIFF made his best  
9 efforts to complete the information by contacting his mother's attending physician repeatedly.  
10 PLAINTIFF informed DEFENDANT that additional time was needed to provide the  
11 information because the attending physician had not responded to PLAINTIFF'S repeated  
12 requests for information. PLAINTIFF also provided DEFENDANT with the name and contact  
13 information of the attending physician.

14           70.     DEFENDANT unlawfully indicated refusal to establish PLAINTIFF'S right to  
15 take protected leave and terminated PLAINTIFF'S employment on or about May 22, 2012.  
16 Such acts which terminated PLAINTIFF'S employment and discharge of PLAINTIFF  
17 constitutes unlawful discrimination against PLAINTIFF for his exercise of his right to family  
18 care and medical leave.

19           71.     DEFENDANT committed the acts described in this complaint oppressively,  
20 fraudulently, and maliciously, entitling PLAINTIFF to an award of punitive damages against  
21 DEFENDANT in an amount appropriate to punish and make an example of DEFENDANT.  
22 Wherefore, PLAINTIFF prays for damages as further set forth below.

23  
24                   **FIFTH CAUSE OF ACTION**

25                   **Wrongful Termination**

26                   **(By PLAINTIFF Against All Defendants)**

27           72.     PLAINTIFF realleges and incorporates by this reference, as though fully set forth  
28 herein, paragraphs 1 through 71 of this Complaint.

73. California has established a substantial and fundamental public policy against harassment and discrimination on the basis of the exercise of the lawfully protected activity of taking unpaid, leave of absence to care for family members. This policy is partially reflected in statutory form in legislation including; *inter alia*, the Fair Employment and Housing Act Government Code § 12900 *et. seq.* These policies are further supported by the case law interpreting these statutes.

74. PLAINTIFF was involuntarily terminated by DEFENDANT on May 22, 2012 in retaliation for PLAINTIFF'S exercising his right to take unpaid leave to care for the serious medical condition suffered by PLAINTIFF'S ailing mother.

75. DEFENDANT unlawfully subjected PLAINTIFF to an adverse employment set by terminating his employment because of his exercise of his right to CFRA leave. As a result of DEFENDANTS' willful, knowing, and intentional termination of PLAINTIFF in violation of public policy, he has sustained various damages both economic and noneconomic, including *inter alia* loss of earnings, loss of benefits, and emotional distress, all subject to proof at trial.

76. DEFENDANT'S actions alleged herein, and in violation of Govt. Code § 12940, were oppressive, malicious, and/or fraudulent as defined in Civil Code § 3294. Accordingly, PLAINTIFF also requests the award of punitive damages in an amount sufficient to deter Defendants from engaging in similar future behavior, according to proof at trial.

#### **SIXTH CAUSE OF ACTION**

**Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* ("FLSA")**

**(By PLAINTIFF against DEFENDANT)**

77. PLAINTIFF, realleges and incorporates by this reference, as though fully set forth herein, paragraphs 1 through 76 of this Complaint.

78. DEFENDANT is engaged in communication, business, and transmission between the states, and is, therefore, engaged in commerce within the meaning of 29 U.S.C. § 203(b).

79. 29 U.S.C. § 255 provides that a three-year statute of limitations applies to willful violations of the FLSA.

1 80. 29 U.S.C. § 207(a)(1) provides in pertinent part:

2 Except as otherwise provided in this section, no employer shall employ any of his  
3 employees who in any workweek is engaged in commerce or in the production  
4 of goods for commerce, or is employed in an enterprise engaged in commerce or  
5 in the production of goods for commerce, for a workweek longer than forty hours  
6 unless such employee receives compensation for his employment in excess of the  
7 hours above specified at a rate not less than one and one-half times the regular  
8 rate at which he is employed.

9 81. Section 213(a)(1) of the FLSA provides that the overtime pay requirement does  
10 not apply to:

11 any employee employed in a bona fide executive, administrative, or professional  
12 capacity (including any employee employed in the capacity of academic  
13 administrative personnel or teacher in elementary or secondary schools), or in the  
14 capacity of outside salesman (as such terms are defined and delimited from time  
15 to time by regulations of the Secretary, subject to the provisions of the  
16 Administrative Procedure Act [5 USCS §§ 551 et seq.] except [that] an employee  
17 of a retail or service establishment shall not be excluded from the definition of  
18 employee employed in a bona fide executive or administrative capacity because  
19 of the number of hours in his workweek which he devotes to activities not  
20 directly or closely related to the performance of executive or administrative  
21 activities, if less than 40 per centum of his hours worked in the workweek are  
22 devoted to such activities).

23 82. DEFENDANT has willfully engaged in a widespread pattern and practice of  
24 violating the provisions of the FLSA, as detailed above, by uniformly designating certain  
25 employees as "exempt" employees, by their job title and without regard to DEFENDANT's  
26 realistic expectations and actual overall requirements of the job, including the PLAINTIFF who  
27 worked on the production side of DEFENDANT's business enterprise. This was done in an  
28 illegal attempt to avoid payment of overtime wages and other benefits in violation of the FLSA  
and Code of Federal Regulations requirements.

83. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*, the  
PLAINTIFF is entitled to overtime compensation for all overtime hours actually worked, at a  
rate not less than one and one-half times their regular rate of pay for all hours worked in excess  
of forty (40) hours in any workweek. DEFENDANT's failure to pay overtime wages as  
required by federal law was willful and not in good faith.

84. 29 C.F.R. 541.2 establishes that a job title alone is insufficient to establish the  
exempt status of an employee. The exempt or nonexempt status of any particular employee  
must be determined on the basis of whether the employee's salary and duties meet the



1 requirements of the regulations in this part.

2       85. The exemptions of the FLSA as listed in section 13(a), and as explained by 29  
3 C.F.R. 541.3, do not apply to the PLAINTIFF because their work consists of non-management,  
4 production line labor performed with skills and knowledge acquired from on-the-job training,  
5 rather than from the prolonged course of specialized intellectual instruction required for exempt  
6 learned professional employees such as medical doctors, architects and archeologists. Plaintiff  
7 did not hold an advanced degree, have not taken any prolonged course of specialization, and/or  
8 have attained the vast majority of the skills they use as employees of DEFENDANT from on-  
9 the-job training.

10       86. For an employee to be exempt as a bona fide "commissioned salesperson," all  
11 the following criteria must be met and DEFENDANT has the burden of proving that:

- 12       (a) The employee's primary duty must be making sales as defined to include any  
13 sale, exchange, contract to sell, consignment sale, shipment for sale, or other  
14 disposition; or
- 15       (b) The employee must obtain orders or contracts for services or for the use of  
16 facilities for which a consideration will be paid by the client or customer; and,
- 17       (c) The employee's earnings must be exceed one and one-half times the minimum  
18 wage; and,
- 19       (d) The employee must earn more than half of their income from bona fide sales  
20 commissions; and,
- 21       (e) The employee must be primarily engaged in duties which meet the test of  
22 exemption.

23 PLAINTIFF was not an inside salesperson because he fails to meet the requirements of being  
24 an "commissioned salesperson" within the meaning of the applicable Wage Order.

25       87. For an employee to be exempt as a bona fide "outside salesperson," all the  
26 following criteria must be met and DEFENDANT has the burden of proving that:

- 27       (a) The employee's primary duty must be making sales as defined to include any  
28 sale, exchange, contract to sell, consignment sale, shipment for sale, or other



disposition; or

(b) The employee must obtain orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and,

(c) The employee must customarily and regularly spend more than half the work time away from the employer's place of business engaged in sales-related activity; and,

(d) The employee must be primarily engaged in duties which meet the test of exemption.

PLAINTIFF is not an outside salesperson because he fails to meet the requirements of being an "outside salesperson" within the meaning of the applicable Wage Order.

88. For an employee to be exempt as a bona fide "executive," all the following criteria must be met and DEFENDANT has the burden of proving that:

(a) The employee's primary duty must be management of the enterprise, or of a customarily recognized department or subdivision;

(b) The employee must customarily and regularly direct the work of at least two (2) or more other employees;

(c) The employee must have the authority to hire and fire, or to command particularly serious attention to his or her recommendations on such actions affecting other employees; and,

(d) The employee must be primarily engaged in duties which meet the test of exemption.

PLAINTIFF was not an executive because he fails to meet the requirements of being an "executive" under section 13 of the FLSA and 29 C.F.R. 541.100. Moreover, PLAINTIFF did not manage the work of two or more other employees in a customarily recognized department or subdivision of the employer, and whose recommendations as to the hiring, firing, advancement, promotion or other change of status of the other employees were given particular weight and therefore, he does not qualify for the executive exemption.

89. For an employee to be exempt as a bona fide "administrator," all of the following

1 criteria must be met and DEFENDANT has the burden of proving that:

- 2 (a) The employee must perform office or non-manual work directly related to  
3 management or general business operation of the employer or the employer's  
4 customers;
- 5 (b) The employee must customarily and regularly exercise discretion and  
6 independent  
7 judgment with respect to matters of significance; and,
- 8 (c) The employee must regularly and directly assist a proprietor or an exempt  
9 administrator; or,
- 10 (d) The employee must perform under only general supervision, work requiring  
11 special training, experience, or knowledge; and,
- 12 (e) The employee must be primarily engaged in duties which meet the test of  
13 exemption.

14 PLAINTIFF is not an administrator because he fails to meet the requirements of for being an  
15 "administrator" under section 13(a) of the FLSA and 29 C.F.R. 541.300.

16 90. For an employee to be exempt as a bona fide "professional", DEFENDANT has  
17 the burden of proving that the primary duty of the employee is the performance of work that:

- 18 (a) Requires knowledge of an advanced type in a field of science or learning  
19 customarily acquired by a prolonged course of specialized intellectual instruction;  
20 or
- 21 (b) Requires invention, imagination, originality or talent in a recognized field of  
22 artistic or creative endeavor.

23 PLAINTIFF is not a professional because he fails to meet the requirements of being an  
24 "professional" within the meaning of 29 CFR 541.300. Further, PLAINTIFF operated under  
25 intense scrutiny from management and are strictly dictated by written guidelines and  
26 standardized procedures.

27 91. PLAINTIFF, worked more than forty (40) hours in a workweek. At all relevant  
28 times while PLAINTIFF was classified as exempt, DEFENDANT failed to pay the PLAINTIFF

1 overtime compensation for the hours he have worked in excess of the maximum hours  
2 permissible by law as required by section 207 of the FLSA, even though the PLAINTIFF was  
3 regularly required to work, and did in fact work, overtime hours.

4 92. For purposes of the Fair Labor Standards Act, the employment practices of  
5 DEFENDANT were and are uniform throughout the United States in all respects material to the  
6 claims asserted in this Complaint.

7 93. There are no other exemptions applicable to the PLAINTIFF.

8 94. As a result of DEFENDANT's failure to pay overtime compensation for  
9 overtime hours worked, as required by the FLSA, the PLAINTIFF was damaged in an amount  
10 to be proved at trial.

11 95. Therefore, the PLAINTIFF demands that he be paid overtime compensation as  
12 required by the FLSA for every hour of overtime worked in any workweek for which he was  
13 not compensated, plus interest and statutory costs as provided by law.

14 **PRAYER FOR RELIEF**

15 WHEREFOR, the PLAINTIFF prays for judgment against each Defendant, jointly and  
16 severally, as follows:

17 1. On the UCL claim:

18 A) An order requiring DEFENDANT to correctly calculate and pay all wages and  
19 all sums unlawfully withheld from compensation due to the PLAINTIFF; and,

20 B) Restitutionary disgorgement of DEFENDANT's ill-gotten gains for restitution  
21 of the sums incidental to DEFENDANT's violations due to the PLAINTIFF; and,

22 2. On the California Labor Code claims:

23 A) Compensatory damages, according to proof at trial, including compensatory  
24 damages for overtime compensation due to the PLAINTIFF plus interest thereon  
25 at the statutory rate; and,

26 B) The greater of all actual damages or fifty dollars (\$50) for the initial pay period  
27 in which a violation occurs and one hundred dollars (\$100) for each violation in  
28 a subsequent pay period, not exceeding an aggregate penalty of four thousand

dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226.

4. On all claims:

- A) An award of interest, including prejudgment interest at the legal rate;
- B) Such other and further relief as the Court deems just and equitable; and,
- C) An award of penalties and cost of suit, but neither this prayer nor any other allegation or prayer in this Complaint is to be construed as a request, under any circumstance, that would result in a request for attorneys' fees under Cal. Lab. Code § 218.5.

5. On Retaliation and Wrongful Termination Claim

- A) Compensatory damages, according to proof at trial, but in excess of \$25,000.
- B) For punitive damages in an amount necessary to make an example of and to punish DEFENDANT and deter DEFENDANT from engaging in future similar conduct;
- C) For loss of earnings (both past and future);
- D) For interest at the legal rate in an amount according to proof;

6. On the FLSA Claim

- A) That the PLAINTIFF recover compensatory damages and an equal amount of liquidated damages as provided under the law and in 29 U.S.C. § 216(b).

Dated: July 29, 2012

BLUMENTHAL, NORDREHAUG & BHOWMIK

By: 

Norman B. Blumenthal  
Attorneys for Plaintiff

**DEMAND FOR JURY TRIAL**

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: July 20, 2012

BLUMENTHAL, NORDREHAUG & BHOWMIK

By. 

Norman B. Blumenthal  
Attorneys for Plaintiff

K:\D\Dropbox\Pending Litigation\Wells Fargo - Curry\d-FAC.wpd

**BLUMENTHAL, NORDREHAUG & BHOWMIK**

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Piya Mukherjee (State Bar #274217)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF LOS ANGELES**

ISAAC CURRY, individually,

Plaintiff,

vs.

WELLS FARGO BANK, N.A.; and  
DOES 1 through 50 inclusive,

Defendants.

CASE No. YC066168

**PROOF OF SERVICE**

Date filed: December 22, 2011

PROOF OF SERVICE

Case No.: YC066168

1 STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

2 I, Aparajit Bhowmik, am employed in the County of San Diego, State of California. I  
3 am over the age of 18 and not a party to the within action. My business address is 2255  
Calle Clara, La Jolla, California 92037.

4 On July 20, 2012, I served the document(s) described as:

5  
6 **1. FIRST AMENDED COMPLAINT**

7  
8 XX (BY MAIL): I caused each such envelope, with postage thereon fully prepaid,  
9 to be placed in the United States mail at San Diego, California. I am readily  
10 familiar with this firm's business practice for collection and processing of  
correspondence for mailing with the U.S. Postal Service pursuant to which  
11 practice the correspondence will be deposited with the U.S. Postal Service this  
same day in the ordinary course of business (C.C.P. Section 10139a); 2015.5):

12 Lindbergh Porter  
LITTLER MENDELSON, P.C.  
650 California Street  
13 20<sup>th</sup> Floor  
San Francisco, CA 94108  
14 Attorneys for Defendant Wells Fargo Bank, N.A.

15  
16 X (State): I declare under penalty of perjury under the laws of the State of California  
17 that the above is true and correct.

18 Executed on July 20, 2012, at La Jolla, California.

19  
20   
21 Aparajit Bhowmik

22  
23 K:\D\Dropbox\Pending Litigation\Wells Fargo - Curry\pos-FAC.wpd  
24  
25  
26  
27  
28

# **EXHIBIT I**



LINDBERGH PORTER, Bar No. 100091  
MARY D. WALSH, Bar No. 197039  
LITTLER MENDELSON, P.C.  
650 California Street  
20th Floor  
San Francisco, CA 94108.2693  
Telephone: 415.433.1940  
Fax No.: 415.399.8490

Attorneys for Defendant  
WELLS FARGO BANK, N.A.

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

AUG 10 2012

John A. Clarke, Executive Officer/Clerk

By [Signature] Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

ISAAC CURRY, individually

Plaintiff,

v.

WELLS FARGO BANK, N.A.; and DOES  
1 through 50, inclusive,

Defendants.

Case No. YC066168

ASSIGNED FOR ALL PURPOSES TO  
JUDGE LAURA C. ELLISON

DEFENDANT WELLS FARGO BANK'S  
ANSWER TO PLAINTIFF'S FIRST  
AMENDED COMPLAINT

Trial Date: February 26, 2013

Complaint Filed: December 22, 2011

FAX FILE

1 Defendant Wells Fargo Bank, N.A. ("Wells Fargo") hereby answers the unverified  
 2 First Amended Complaint ("Complaint") filed by Plaintiff Isaac Curry ("Plaintiff") in the above-  
 3 referenced action as follows:

4  
 5 **GENERAL DENIAL**

6 Pursuant to the provisions of the California Code of Civil Procedure section  
 7 431.30(d), Wells Fargo denies generally and specifically each and every allegation contained in the  
 8 First Amended Complaint. In addition, Wells Fargo denies Plaintiff has sustained, or will sustain,  
 9 any loss or damage in the manner or amount alleged, or otherwise, by reason of any act or omission,  
 10 or any other conduct or absence thereof on the part of Wells Fargo.

11  
 12 **AFFIRMATIVE AND OTHER DEFENSES**

13 Wells Fargo asserts the following affirmative and other defenses, which it has  
 14 designated, collectively, as "affirmative defenses." Wells Fargo's designating its defenses as  
 15 "affirmative" is not intended in any way to alter Plaintiff's burden of proof with regard to any  
 16 element of his cause of action.

17 **FIRST AFFIRMATIVE DEFENSE**

18 1. The Complaint and each purported cause of action alleged therein fail to state  
 19 facts sufficient to constitute a cause of action upon which relief can be granted.

20 **SECOND AFFIRMATIVE DEFENSE**

21 2. Wells Fargo alleges that each purported cause of action set forth in the  
 22 Complaint is barred in whole or in part by the applicable statute(s) of limitation, including without  
 23 limitation, 29 U.S.C. §225; California Code of Civil Procedure §§338(a) and 340(a); California  
 24 Business and Professions Code section 17208; California Government Code §§12960 and 12965(b);  
 25 and/or any other applicable statutes of limitations.

**THIRD AFFIRMATIVE DEFENSE**

3. The Complaint and each purported cause of action alleged therein are barred because Plaintiff was or is properly classified as an exempt employee under the outside sales, commissioned sales, executive, administrative, and/or combination exemptions under the California Labor Code and its interpreting regulations.

**FOURTH AFFIRMATIVE DEFENSE**

4. The Complaint and each purported cause of action alleged therein are barred because Plaintiff was or is properly classified as an exempt employee under the outside sales, commissioned sales, executive, administrative, highly-compensated employee, and/or combination exemptions under the Fair Labor Standards Act, 29 U.S.C. §§ 207, 213(a), 213(b), and its interpreting regulations.

**FIFTH AFFIRMATIVE DEFENSE**

5. The Complaint and each purported cause of action alleged therein are barred because Plaintiff misperformed his duties and/or failed to perform the duties which Wells Fargo realistically and reasonably expected Plaintiff to perform.

**SIXTH AFFIRMATIVE DEFENSE**

6. Some or all of the disputed time for which Plaintiff seeks to recover (of wages purportedly owed) is not compensable pursuant to the doctrine of *de minimis non curat lex*.

**SEVENTH AFFIRMATIVE DEFENSE**

7. Wells Fargo at all times acted in good faith to comply with the FLSA and the California Labor Code and Wage Order(s) and with reasonable grounds to believe that its actions did not violate the FLSA and/or the California Labor Code and Wage Order(s), and Wells Fargo asserts a lack of willfulness or intent to violate the FLSA and/or the California Labor Code and Wage Order(s) as a defense to any claim by Plaintiff for liquidated damages.

**EIGHTH AFFIRMATIVE DEFENSE**

8. Plaintiff's claims are barred in whole or in part by the provisions of Section 10 of the Portal-to-Portal Act, 29 U.S.C. § 259, because actions taken in connection with Plaintiff's compensation were done in good faith in conformity with and reliance upon written administrative

1 regulations, orders, rulings, approvals, interpretations, and written and unwritten administrative  
2 practices or enforcement policies of the Administrator of the Wage and Hour Division of the United  
3 States Department of Labor.

4 **NINTH AFFIRMATIVE DEFENSE**

5 9. Plaintiff's claims are barred in whole or in part by the provisions of Section 11  
6 of the Portal-to-Portal Act, 29 U.S.C. § 260, because any acts or omissions giving rise to this action  
7 were done in good faith and with reasonable grounds for believing that the actions or omissions were  
8 not a violation of the FLSA.

9 **TENTH AFFIRMATIVE DEFENSE**

10 10. Plaintiff's claims are barred, in whole or in part, by the provisions of Section 4  
11 of the Portal-to-Portal Act, 29 U.S.C. § 254, as to all hours during which Plaintiff was engaged in  
12 activities which were preliminary or postliminary to his principal activities or incidental to them.

13 **ELEVENTH AFFIRMATIVE DEFENSE**

14 11. Plaintiff is not entitled to a penalty award under the FLSA (29 U.S.C. §207).

15 **TWELFTH AFFIRMATIVE DEFENSE**

16 12. Plaintiff is not entitled to any penalty award under the California Business and  
17 Professions Code § 17200, *et seq.*, the California Labor Code, or any Wage Order because Wells  
18 Fargo did not willfully fail to comply with the compensation provisions of the California Labor  
19 Code or the applicable Wage Order(s), but rather acted in good faith and had reasonable grounds for  
20 believing it did not violate them.

21 **THIRTEENTH AFFIRMATIVE DEFENSE**

22 13. Wells Fargo alleges that Plaintiff sustained no injury from any alleged failure  
23 by Wells Fargo to comply with Labor Code section 226.

24 **FOURTEENTH AFFIRMATIVE DEFENSE**

25 14. Wells Fargo alleges that Plaintiff was exempt from payment of overtime  
26 wages pursuant to the administrative, outside sales, commissioned sales, and/or combination  
27 exemptions and, pursuant to Labor Code section 226(a), Plaintiff was not entitled, *inter alia*, to a  
28 wage statement specifying an hourly rate and number of hours worked.

**FIFTEENTH AFFIRMATIVE DEFENSE**

15. Wells Fargo alleges that, even assuming *arguendo*, Plaintiff was not provided with a proper itemized statement of wages and deductions, or that an electronic wage statement did not comply with the Labor Code, Plaintiff is not entitled to recover damages or penalties because Wells Fargo's alleged failure to comply with California Labor Code section 226(a) was not a "knowing and intentional failure" under California Labor Code section 226(e).

**SIXTEENTH AFFIRMATIVE DEFENSE**

16. Wells Fargo alleges that its electronic wage statements satisfy Labor Code section 226(a).

**SEVENTEENTH AFFIRMATIVE DEFENSE**

17. Wells Fargo alleges that in the event damages, injuries and/or losses were suffered by Plaintiff, which Wells Fargo denies, such damages, injuries and/or losses resulted from the negligence of parties, persons and/or entities other than Wells Fargo, and the liability of Wells Fargo, if any, is limited in direct proportion to the percentage of fault actually attributed to Wells Fargo pursuant to applicable law(s).

**EIGHTEENTH AFFIRMATIVE DEFENSE**

18. The Complaint and each purported cause of action alleged therein are barred to the extent Plaintiff has released Wells Fargo from any claim Plaintiff may have against it.

**NINETEENTH AFFIRMATIVE DEFENSE**

19. Wells Fargo alleges there exists a bona fide dispute as to whether any further compensation is actually due to Plaintiff and, if so, the amount thereof.

**TWENTIETH AFFIRMATIVE DEFENSE**

20. Plaintiff's claims are barred to the extent Plaintiff failed to exercise reasonable care to mitigate his damages, if any were suffered, and that his rights to recover against Wells Fargo should be reduced and/or eliminated by such a failure.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

21. Wells Fargo is informed and believes that a reasonable opportunity for investigation and discovery will reveal, and on that basis alleges, the Complaint and each cause of

1 action set forth therein are barred by the equitable doctrines of waiver or estoppel, or laches, or  
 2 unclean hands.

3 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

4 22. Wells Fargo is informed and believes that a reasonable opportunity for  
 5 investigation and discovery will reveal and, on that basis, alleges Plaintiff's claims are barred by his  
 6 own breach of the duties owed to Wells Fargo under California Labor Code sections 2854, 2856,  
 7 2857, 2858 and/or 2859.

8 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

9 23. Wells Fargo alleges that the Complaint and each cause of action set forth  
 10 therein are barred because Plaintiff failed to timely and completely exhaust his requisite  
 11 administrative and/or contractual remedies available to him under the California Labor Code and/or  
 12 the California Government Code prior to commencing this action.

13 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

14 24. Defendant alleges that the Complaint, and each cause of action contained  
 15 therein, fails because Plaintiff's employment was terminable at will with or without cause or notice.

16 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

17 25. Defendant alleges that the actions complained of by Plaintiff were based on  
 18 legitimate, nondiscriminatory, and nonretaliatory reasons.

19 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

20 26. Defendant alleges that Plaintiff's Complaint is barred, in whole or in part,  
 21 because it had no knowledge of any alleged discriminatory, retaliatory or otherwise unlawful  
 22 behavior by any of its employees, agents, representatives, or independent contractors.

23 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

24 27. Defendant alleges that to the extent any individual engaged in any  
 25 discriminatory, retaliatory, or otherwise unlawful behavior, the alleged acts were committed outside  
 26 the course and scope of employment.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

28. Defendant alleges that to the extent that during the course of this litigation it acquires any evidence of Plaintiff's wrongdoing, such after-acquired evidence bars Plaintiff's claims of liability or damages or reduces such claims as provided by law.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

29. Defendant alleges that Plaintiff's Complaint is barred, in whole or in part, because Defendant exercised reasonable care to prevent and promptly correct any alleged retaliatory or otherwise unlawful behavior.

**THIRTIETH AFFIRMATIVE DEFENSE**

30. Defendant alleges that Plaintiff's claims are barred, in whole or in part, or any recovery should be reduced, pursuant to the avoidable consequences doctrine, because Defendant took reasonable steps to prevent and correct workplace retaliation, Plaintiff unreasonably failed to use the preventative and corrective opportunities provided by Defendant and reasonable use of Defendant's procedures would have prevented at least some of the harm that the Plaintiff allegedly suffered.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

31. Defendant alleges that Plaintiff has failed to state facts sufficient to constitute a claim for punitive damages.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

32. Wells Fargo alleges that to the extent the amount of any punitive damages awarded are unreasonable, excessive, arbitrary, or disproportionate to the amount of harm to Plaintiff and to the general damages recovered, Wells Fargo's rights to procedural due process under the Fifth, Seventh, Eighth and Fourteenth Amendment to the United States Constitution and the Constitution of the State of California will be violated.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

33. Defendant alleges that Plaintiff's claim for punitive damages is barred because Defendant had a suitable anti-discrimination and retaliation policy in effect at all material times.



**ADDITIONAL AFFIRMATIVE AND OTHER DEFENSES**

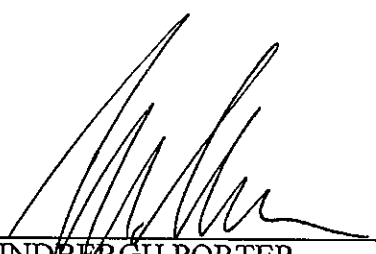
34. Wells Fargo presently has insufficient knowledge or information upon which to form a belief as to whether there may be additional, as yet unstated, defenses and reserves the right to assert additional defenses or affirmative defenses in the event discovery indicates such defenses are appropriate.

**PRAYER FOR RELIEF**

WHEREFORE, Wells Fargo prays for relief as follows:

1. That Plaintiff take nothing and that the Complaint be dismissed in its entirety with prejudice;
2. That judgment be entered in Wells Fargo's favor;
3. That Wells Fargo be awarded such other and further relief as the Court deems just and proper.

Dated: August 9, 2012

  
LINDBERGH PORTER  
MARY D. WALSH  
LITTLER MENDELSON, P.C.  
Attorneys for Defendant  
WELLS FARGO BANK, N.A.

Firmwide:113387729.1 051995.1048



**PROOF OF SERVICE BY MAIL**

I am employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 650 California Street, 20th Floor, San Francisco, California 94108.2693. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On August 10, 2012, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

**DEFENDANT WELLS FARGO BANK'S ANSWER TO  
PLAINTIFF'S FIRST AMENDED COMPLAINT**

in a sealed envelope, postage fully paid, addressed as follows:

Norman Blumenthal, Esq.  
Kyle R. Nordrehaug, Esq.  
Aparajit Bhowmik, Esq.  
Blumenthal, Nordrehaug & Bhowmik  
2255 Calle Clara  
La Jolla, CA 92037

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 10, 2012, at San Francisco, California.

  
Cynthia K. Montague

**PROOF OF SERVICE BY MAIL**

I am employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 650 California Street, 20th Floor, San Francisco, California 94108.2693. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On August 13, 2012, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

**NOTICE TO FEDERAL COURT OF REMOVAL OF CIVIL  
ACTION FROM STATE COURT PURSUANT TO 28 U.S.C. §§  
1331, 1441, AND 1446**

in a sealed envelope, postage fully paid, addressed as follows:

Norman Blumenthal, Esq.  
Kyle R. Nordrehaug, Esq.  
Aparajit Bhowmik, Esq.  
Blumenthal, Nordrehaug & Bhowmik  
2255 Calle Clara  
La Jolla, CA 92037

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 13, 2012, at San Francisco, California.

  
Cynthia K. Montague

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Otis D. Wright II and the assigned discovery Magistrate Judge is Patrick J. Walsh.

The case number on all documents filed with the Court should read as follows:

**CV12- 6962 ODW (PJWx)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====:

**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☐ **Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

☐ **Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

☐ **Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

00/00/2012 13:17:27 FAX 2132522003

ASAP LEGAL SOLUTION ATTY

1

**COPY****UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**

|   |  |
|---|--|
| <b>I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>)</b><br><b>ISAAC CURRY</b>   | <b>DEFENDANTS</b><br><b>WELLS FARGO BANK, N.A.</b>   |
| <b>(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)</b><br>Norman Blumenthal<br>Kyle Nordrehaug<br>Aparajit Bhowmik<br><b>BLUMENTHAL, NORDREHAUG &amp; BHOWMIK</b><br>2255 Calle Clara, La Jolla, CA 92037 (858) 551.1223 | <b>Attorneys (If Known)</b><br>Lindbergh Porter<br>Mark D. Walsh<br><b>LITTLER MENDELSON, P.C.</b><br>650 California Street, 20 <sup>th</sup> Floor<br>San Francisco, CA 94108<br>(415) 433.1940 |

|  |   |   |  |   |  |                          |   |   |   |   |   |                |   |
|--|---|---|--|---|--|--------------------------|---|---|---|---|---|----------------|---|
| <b>II. BASIS OF JURISDICTION (Place an X in one box only.)</b><br><br><input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)<br><br><input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) | <b>III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only</b><br>(Place an X in one box for plaintiff and one for defendant.) <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:33%;">PTF DEF<br/><input type="checkbox"/> 1 <input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business in this State</td> <td style="width:33%;">PTF DEF<br/><input type="checkbox"/> 4 <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5 <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table> | Citizen of This State   | PTF DEF<br><input type="checkbox"/> 1 <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | PTF DEF<br><input type="checkbox"/> 4 <input type="checkbox"/> 4 | Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |
| Citizen of This State  | PTF DEF<br><input type="checkbox"/> 1 <input type="checkbox"/> 1  | Incorporated or Principal Place of Business in this State     | PTF DEF<br><input type="checkbox"/> 4 <input type="checkbox"/> 4 |   |  |                          |   |   |   |   |   |                |   |
| Citizen of Another State   | <input type="checkbox"/> 2 <input type="checkbox"/> 2   | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5            |   |  |                          |   |   |   |   |   |                |   |
| Citizen or Subject of a Foreign Country  | <input type="checkbox"/> 3 <input type="checkbox"/> 3   | Foreign Nation  | <input type="checkbox"/> 6 <input type="checkbox"/> 6            |   |  |                          |   |   |   |   |   |                |   |

|  |
|--|
| <b>IV. ORIGIN (Place an X in one box only.)</b><br><input type="checkbox"/> 1 Original Proceeding <input checked="" type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge |
|--|

|  |
|--|
| <b>V. REQUESTED IN COMPLAINT: JURY DEMAND:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.)<br><b>CLASS ACTION under F.R.C.P. 23:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <b>MONEY DEMANDED IN COMPLAINT: \$</b> _____ |
|--|

|   |
|---|
| <b>VI. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)</b><br>Fair Labor Standards Act, 29 U.S.C. section 201, et. seq. |
|---|

|  |   |  |  |  |   |   |
|--|---|--|--|--|---|---|
| <b>VII. NATURE OF SUIT (Place an X in one box only.)</b> <table style="width:100%; font-size: small;"> <tr> <td style="width:16.6%; vertical-align: top;"> <b>OTHER STATUTES</b><br/> <input type="checkbox"/> 400 State Reapportionment<br/> <input type="checkbox"/> 410 Antitrust<br/> <input type="checkbox"/> 430 Banks and Banking<br/> <input type="checkbox"/> 450 Commerce/ICC Rates/etc.<br/> <input type="checkbox"/> 460 Deportation<br/> <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br/> <input type="checkbox"/> 480 Consumer Credit<br/> <input type="checkbox"/> 490 Cable/Sat TV<br/> <input type="checkbox"/> 810 Selective Service<br/> <input type="checkbox"/> 850 Securities/Commodities/Exchange<br/> <input type="checkbox"/> 875 Customer Challenge 12 USC 3410<br/> <input type="checkbox"/> 890 Other Statutory Actions<br/> <input type="checkbox"/> 891 Agricultural Act<br/> <input type="checkbox"/> 892 Economic Stabilization Act<br/> <input type="checkbox"/> 893 Environmental Matters<br/> <input type="checkbox"/> 894 Energy Allocation Act<br/> <input type="checkbox"/> 895 Freedom of Info. 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FOR OFFICE USE ONLY: Case Number: \_\_\_\_\_

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**  
**CIVIL COVER SHEET**

VIII(a). **IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

VIII(b). **RELATED CASES:** Have any cases been previously filed in this court that are related to the present case? ☐ No ☒ Yes

If yes, list case number(s): EDCV 10-01378 VAP (DTBx); EDCV 10-1098 DOC (RNBx); SACV10-1085 DOC (RNBx); CV 10-4761 PA (PJWx)

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☒ A. Arise from the same or closely related transactions, happenings, or events; or  
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or  
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. **VENUE:** (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

|                           |   |
|---------------------------|---|
| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
| Los Angeles               | Nevada  |

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

|                           |   |
|---------------------------|---|
| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
| All counties              |   |

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

|                           |   |
|---------------------------|---|
| County in this District:* | California County outside of this District; State, if other than California; or Foreign Country |
| Los Angeles               |   |

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER): Mary D. Walsh Date August 13, 2012

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

| Nature of Suit Code | Abbreviation | Substantive Statement of Cause of Action   |
|---------------------|--------------|--|
| 861                 | HIA          | All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b)) |
| 862                 | BL           | All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)  |
| 863                 | DIWC         | All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))   |
| 863                 | DIWW         | All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))  |
| 864                 | SSID         | All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.  |
| 865                 | RSI          | All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))   |